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PUBLIC SAFETY OFFICERS' BENEFITS ACT—LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 12, S. 15, H.R. 163, H.R. 4598, and H.R. 6449

PUBLIC SAFETY OFFICERS' BENEFITS ACT; AND LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

JULY 25 AND 26, 1973

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PUBLIC SAFETY OFFICERS' BENEFITS ACT—LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

WEDNESDAY, JULY 25, 1973

House of Representatives,
Subcommittee on Immigration,
Citizenship, and International Law,
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2226, Rayburn House Office Building, Representative Joshua Eilberg [chairman of the subcommittee presiding].

Present: Representatives Eilberg, Flowers, Holtzman, Keating, Railsback, Wiggins, and Fish.

Also present: Garner J. Cline, counsel; Arthur P. Endres, Jr., assistant counsel; and Donald G. Benn, associate counsel.

Mr. Eilberg. The subcommittee will come to order.

Today's hearings have been called to consider H.R. 12—Public Safety Officers' Benefits Act—introduced by the distinguished chairman of this committee; H.R. 163, introduced by Congressman John W. Davis; and H.R. 4598, introduced by Congressman Mario Biaggi. Chairman Rodino's bill would provide a lump-sum gratuity of $50.000 to the surviving dependents of public safety officers who are killed in the line of duty.

I will digress from my statement for a moment to indicate that Chairman Rodino has pressing obligations in the Capitol this morning and cannot be personally present. However, we will make part of the record his statement which I will hand to the stenographer and have it included as though he were here to testify.

[Statement of the Honorable Peter W. Rodino, Jr., follows:]

Statement of Hon. Peter W. Rodino, Jr., Chairman, House Judiciary Committee, in Support of H.R. 12

Mr. Chairman, I thank the Committee for giving me the opportunity to be heard on the bill I sponsored, H.R. 12, designed to provide survivor benefits for policemen, firemen, and other public safety officers who are killed in the line of duty.

There are many bills identical to H.R. 12 and there are many bills which are similar.

I drafted H.R. 12 to correspond with the language of a bill that passed the House last year and, except for the adjournment of Congress, I am sure it would have been enacted into law.

H.R. 12 would award a lump sum gratuity of $50,000 to surviving dependents of an officer whose death occurred as a result of injury in the performance of duty. My bill differs from other legislation in that it does not arbitrarily restrict benefits; it is not contingent on death occurring specifically due to a criminal act. The common-sense need for such an approach is seen in a simple example. What if a fireman loses his life in a fiery blaze? I believe that his survivors should be left just as financially secure as the policeman who is slain while performing his duty.

It is my contention that logic is not best served by narrowing the scope of our willingness to help. If a man gives his life—if he dies or is killed—because he was performing his assigned job of protecting our society, then I believe we should follow the spirit of compassion and justice in providing monetary benefits to his survivors. Why quarrel over the exact circumstance in which a human life is lost in the service of his fellowman?

To discuss bills dealing with survivor benefits is not a pleasant task in any circumstance because its very premise is the harsh reality that each time a policeman or fireman or correction official puts on his uniform, he literally takes his life into his hands. Yet this real fact is, indeed, a part of the daily life of a public safety official.

Under present law, only federal law enforcement officers, or non-federal officers if they are injured or killed enforcing a federal criminal statute, are covered.

As I have stated, this legislation almost became public law in the 92nd Congress. That Congress passed legislation similar to H.R. 12 (H.R. 16932), as did the Senate, and the differences in the two bills were resolved at a conference meeting. Yet the conference report never was considered by the House.

This Subcommittee held two days of hearings during the 92nd Congress on the subject of such death benefits, so I believe that we are all now well-acquainted with the grim facts . . . that 126 police officers were killed in the line of duty in 1971, 112 killed in 1972 . . . that the total of firefighters killed includes 120 in 1971, while 730 were injured that year . . . that the average age of these officers killed in the last ten years is 30 years of age.

And, if I may digress for one moment, I would ask each of us to reflect on our individual life circumstance when we turned 30 years old. Most men are then assuming their first mortgage, are burdened with the costs of young children, and are probably more in debt relative to their income than they ever will be in their lives again.

There is little that Congress can really do to compensate the grieving family of a slain law enforcement officer, but, with the enactment of a survivors' bill, we can remove the harsh edge of economic distress. I might point out that these benefits would be paid in addition to any other benefits which a given locality might also provide. This is true except in the case of the District of Columbia as the Congress has already passed Public Law 91–509 which provided these same benefits to District policemen in 1970. It surely is time for the rest of the nation's policemen to be treated as fairly—as well as firemen and correction officials.

Evidence from our hearings last year pointed out the two grim phenomena which have occurred in recent years. First, the great crime explosion of the late 1960's, when crime first became a grave national concern, and second, the large numbers and vicious methods by which our law enforcement officers have been slain in recent years.

One example that comes to mind was the April 1972 killing of a New York City patrolman. This officer was shot and killed while investigating a report that a fellow officer needed assistance. The complainant claimed to be a detective and furnished the address of a place of worship as the place of the occurrence. The victim officer entered the place of worship and was severely attacked and beaten by several subjects. He was killed as other officers arrived and a gun battle ensued. Needless to say, the original assistance complaint was unfounded.

Such ambush murders are a dangerous threat, not only to the local communities, but to the safety and security of the Nation at large. In 1972, 14 police officers met their death in ambush situations.

Of course, other circumstances generally prevail in the murder of public safety officers. In my own state of New Jersey, we lost a fine young officer a year ago in January. In this case, the officer was on special assignment assisting an ambulance driver in transporting a mental patient to the hospital. The mental patient seized the officer's revolver in a scuffle while enroute to the hospital and shot the officer twice in the back.

Financial aid does not bring the officer back, but personally, I feel indebted to a dedicated professional who meets his untimely death in such unexpected circumstances. I should hope this Congress and the American public also feels an obligation to his family.

We heard testimony last year from a number of law enforcement officers. It was Quinn Tamm, executive director of the International Association of Chiefs of Police (IACP), who pointed out that the medium salary for police officers falls *below* the pay scales for many of those positions we refer to as non-professional—semi-skilled labor including truckers, construction workers, steel workers, stevedores, longshoremen, etc. In expressing the support for this legislation of the eighty-seven hundred police officials who comprise the IACP membership, Mr. Tamm stated: "It would appear that a single federally-sponsored and administered program would alleviate much of the weakness in processing payments and provide for more uniform compensation across the country since compensation now varies in each state and has as many variations as there are individual agencies."

Chief Francis E. Virgulak of Norwalk, Connecticut, explained that in most cases police officers cannot afford to pay for what would be considered adequate life insurance protection because of the higher premiums charged to members of such hazardous occupations.

As the question came up again and again in our hearings last year, "why can't compensation be done by the counties and the states themselves," many answers were provided. Best among these, and I am in sympathy, is that the states and localities have not attended to this problem, that such volunteer funds as are available—well meant as they may be—are not adequate, and that given the present circumstances, police do look to the Federal Government to take the leadership in providing such essential benefits. In the light of what has happened in the last decade, I believe the enormity and seriousness of the problem makes it a Federal concern.

Robert D. Gordon, executive director, International Conference of Police Associations, testified: "this legislation . . . would be helpful in adding to the dignity and professionalism of police work throughout the United States."

During our hearings last year, I was deeply impressed with the statement of Captain Charles Kinney, Police Department, Newark, New Jersey. In part, he talked about professional police work and said, "There are hardships in police work, both physical ones in the form of assault upon our persons and verbal ones in the form of castigation and worse from some of those we are endeavoring to protect. The passage of legislation protecting our loved ones will alleviate some of the hardships."

I believe that our focus on the need for such benefits to the survivors of policemen, firemen, and correction officials, today should serve as an impetus to move this legislation quickly on the floor of the House. The Senate has already passed S. 15, a bill which would provide a $50,000 death gratuity to survivors of officers slain as the result of a criminal act.

I am grateful that there is strong support for H.R. 12. Let us get on with the work demanded of this moment, reaffirm that crocodile tears are repugnant to each of us, and put the stamp of approval of this 93rd Congress on the issue of providing proper security and peace of mind to the men we hire to protect us all.

Mr. EILBERG. The other bills would provide a system for the redress of law enforcement officers' grievances and require the establishment of a law enforcement officers' bill of rights in each of the several States as a condition for receiving grants from the Law Enforcement Assistance Administration.

The chairman's bill is identical to H.R. 16932 which passed the House in the last Congress. I strongly supported this bill when it was considered by the subcommittee and the committee, as well as when it was presented on the floor of the House late last year. The differences between H.R. 16932 and the Senate version of this legislation which passed the Senate on September 5, 1972, by a vote of 80 to 0 were resolved in conference but the adjournment of the 92d Congress prevented consideration of the conference report. I should also note that the conference version is also before this committee as S. 15 which passed the Senate by a voice vote on March 29, 1973.

In addition to Chairman Rodino's bill and the Senate bill, the subcommittee also has pending before it H.R. 6449 which was introduced by seven Republican members of this committee at the request of the administration.

In the Executive communication accompanying H.R. 6449, it was stated that—

> This legislation is needed because of the growing risk of death that public safety officers face while carrying out their assigned tasks, and because of the existing disparity in survivors benefits from State to State.

Furthermore, statistics relating to line of duty deaths of public safety officers clearly demonstrate that the perils of police work and the hazards faced by firefighters and other public safety officers have increased drastically in recent years. In this regard, it is clearly one of the primary responsibilities of any government—be it national or local—to protect the lives and property of its citizenry. Likewise, it is appropriate for the Federal Government to recognize the great debt we owe to those who daily risk their lives in order to preserve peace and order and to express our concern for the families of those who are struck down in the line of duty.

In order to properly express this appreciation and concern, each of these bills proposes to provide a gratuity of $50,000 to the dependent survivors of public safety officers who are killed in the line of duty. At the same time there are several important distinctions between the bills I have just mentioned.

For example, the chairman's bill would cover public safety officers who die as a result of injuries sustained in the performance of certain hazardous duties. The Senate and administration bills, on the other hand, would restrict coverage to deaths which are the result of a criminal act. Another matter which is raised for the subcommittee's consideration is the issue of retroactivity. The Senate bill last year was retroactive to January 1967, while this year's Senate bill is retroactive to the date of the filing of the conference report—October 17, 1972. The House bills, however, are entirely prospective in nature. I am personally inclined to agree with the Senate as to the need for including a retroactive feature in this bill. In addition, there are several other minor differences between the bills which I will not take the time to describe in detail; but I am hopeful that these hearings will assist the subcommittee in resolving all of the issues which are presented for our consideration.

[Copies of H.R. 12, S. 15, H.R. 163, H.R. 4598, and H.R. 6449 follow:]

93D CONGRESS
1ST SESSION

H. R. 12

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, to provide benefits to survivors of certain public safety officers who die in the performance of duty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Safety Officers Benefits Act of 1973".

SEC. 2. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new part:

"PART J.—PUBLIC SAFETY OFFICERS DEATH BENEFITS

"SEC. 701. (a) In any case in which the Administration determines, under regulations issued under part F of this title, that an eligible public safety officer has died as the direct and proximate result of a personal injury sustained in the performance of duty, leaving a spouse or one or more eligible dependents, the Administration shall pay a gratuity of $50,000, in the following order of procedure:

"(1) If there is no dependent child, to the spouse.

"(2) If there is no spouse, to the dependent child or children, in equal shares.

"(3) If there are both a spouse and one or more dependent children, one-half to the spouse and one-half to the child or children, in equal shares.

"(4) If there is no survivor in the above classes, to the parent or parents dependent for support on the decedent, in equal shares.

"(b) As used in this section, a dependent child is any natural, adopted, or posthumous child of the decedent who is—

"(1) under eighteen years of age; or

"(2) over eighteen years of age and incapable of self-support because of physical or mental disability; or

"(3) over eighteen years of age and a student as defined by section 8101 of title 5, United States Code.

"(c) As used in this section, spouse includes a surviving husband or wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of desertion by the decedent.

"(d) As used in this section, the term 'dependent for support' means more than one-half of the support of the dependent concerned.

"(e) As used in this section, the term 'eligible public safety officer' means any individual employed by a public agency as a law enforcement officer or as a fireman (including any individual serving as an officially recognized or designated member of a legally organized volunteer fire department) who is determined by the Administration to have been, at the time of his injury—

"(1) a law enforcement officer engaged in—

"(A) the apprehension or attempted apprehension of any person—

"(i) for the commission of a crime, or

"(ii) who at that time was sought as a material witness in a criminal proceeding; or

"(B) protecting or guarding a person held for the commission of a crime or held as a material witness in connection with a crime; or

"(C) the lawful prevention of, or lawful attempt to prevent, the commission of a crime or was otherwise engaged in the performance of his duty and such injury was the result of a criminal act, or an apparent criminal act; or

"(2) a fireman engaged in the protection of life or property from fire.

"Sec. 702. The gratuity payable to any person under this part is in addition to any benefits to which he may be entitled under any other law.

"Sec. 703. The provisions of this part shall apply with respect to any eligible public safety officer who dies as the direct and proximate result of a personal injury which is sustained on or after the date of enactment of this Act."

Sec. 3. Section 520 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by adding at the end of the section the following sentence: "In addition, there are authorized to be appropriated in each fiscal year such sums as may be necessary to carry out the purposes of part J."

Sec. 4. Section 601 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by changing the period at the end of subsection (c) of that section to a comma and adding: "except that for the purposes of part J the term does not include the District of Columbia."

93D CONGRESS
1ST SESSION

S. 15

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1973

Referred to the Committee on the Judiciary

AN ACT

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a Federal death benefit to the surviving dependents of public safety officers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Safety Officers' Benefits Act of 1973".

SECTION 1. The Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by—

(1) redesignating sections 451 through 455 respectively as sections 421 through 425;

(2) redesignating sections 501 through 522 respectively as sections 550 through 571;

(3) redesignating parts F, G, H, and I of title I respectively as parts I, J, K, and L of title I; and

(4) adding at the end of part G of title I of the Act, the following new part:

"PART H—DEATH BENEFITS FOR PUBLIC SAFETY OFFICERS

"DEFINITIONS

"SEC. 525. As used in this part—

"(1) 'child' means any natural, adopted, or posthumous child of a deceased public safety officer who is—

"(A) under eighteen years of age; or

"(B) over eighteen years of age and incapable of self-support because of physical or mental disability; or

"(C) over eighteen years of age and a student as defined by section 8101 of title 5, United States Code.

"(2) 'criminal act' means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government, which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication, or otherwise, the person engaging in the act, omission, or possession was legally incapable of committing a crime;

"(3) 'dependent' means a person who was wholly or substantially reliant for support upon the income of a deceased public safety officer;

"(4) 'intoxication' means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body;

"(5) 'line of duty' means within the scope of employment or service;

"(6) 'public safety officer' means a person serving a public agency, with or without compensation, as—

"(A) a law enforcement officer, including a corrections or a court officer, engaged in—

"(i) the apprehension or attempted apprehension of any person—

"(a) for the commission of a criminal act, or

"(b) who at the time was sought as a material witness in a criminal proceeding; or

"(ii) protecting or guarding a person held for the commission of a criminal act or held as a material witness in connection with a criminal act; or

"(iii) the lawful prevention of, or lawful attempt to prevent the commission of, a criminal act or an apparent criminal act or in the performance of his official duty; or

"(B) a firefighter; and

"(7) 'separated spouse' means a spouse, without regard to dependency, who is living apart for reasonable cause or because of desertion by the deceased public safety officer.

"AWARDS

"SEC. 526. (a) Upon a finding made in accordance with section 527 of this part the Administration shall provide a gratuity of $50,000.

"(b) (1) Whenever the Administration determines, upon a showing of need and prior to taking final action, that a death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding $3,000 to the person entitled to receive a benefit under section 527 of this part.

"(2) The amount of any interim benefit paid under paragraph (1) of this subsection shall be deducted from the amount of any final benefit paid to such person or dependent.

"(3) Where there is no final benefit paid, the recipient of any interim benefit paid under paragraph (1) of this subsection shall be liable for repayment of such amount. The Administration may waive all or part of such repayment.

"(c) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, but shall be reduced by payments authorized by section 12 (k) of the Act of September 1, 1916, as amended, 4–531 (1) of the District of Columbia Code.

"(d) No benefit paid under this part shall be subject to execution or attachment.

"RECIPIENTS

"SEC. 527. When a public safety officer has been killed in the line of duty and the direct and proximate cause of such death was a criminal act or an apparent criminal act, the Administration shall pay a benefit as provided in section 526 of this part as follows:

"(1) if there is no surviving dependent child of such officer, to the surviving dependent spouse or separated spouse of such officer;

"(2) if there is a surviving dependent child or children and a surviving dependent spouse or separated spouse of such officer, one-half to the surviving dependent child or children of such officer in equal shares and one-half to the surviving dependent spouse or separated spouse of such officer;

"(3) if there is no such surviving dependent spouse or separated spouse, to the dependent child or children of such officer, in equal shares; or

"(4) if none of the above, to the dependent parent or parents of the decedent, in equal shares;

"(5) if none of the above, to the dependent person or persons who are blood relatives of the deceased public safety officer or who were living in his household and who are specifically designated in the public safety officer's duly executed authorization to receive the benefit provided for in this part.

"LIMITATIONS

"SEC. 528. No benefit shall be paid under this part—

"(1) if the death was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death;

"(2) if voluntary intoxication of the public safety officer was the proximate cause of such officer's death; or

"(3) to any person who would otherwise be entitled to a benefit under this part if such person's actions were a substantial contributing factor to the death of the public safety officer."

MISCELLANEOUS PROVISIONS

SEC. 2. Section 569 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended and as redesignated by this Act, is amended by inserting "(a)" immediately after "569" and by adding at the end thereof the following new subsection:

"(b) There is authorized to be appropriated such sums as are necessary for the fiscal year ending June 30, 1974, for the purposes of part H."

SEC. 3. Until specific appropriations are made for carrying out the purposes of this Act, any appropriation made to the Department of Justice or the Law Enforcement Assistance Administration for grants, activities, or contracts shall, in the discretion of the Attorney General, be available for payments of obligations arising under this Act.

SEC. 4. If the provisions of any part of this Act are found invalid or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

SEC. 5. This Act shall become effective and apply to acts and deaths occurring on or after October 17, 1972.

Passed the Senate March 29, 1973.

Attest: FRANCIS R. VALEO,
Secretary.

93d CONGRESS
1st Session

H. R. 163

IN THE HOUSE OF REPRESENTATIVES

January 3, 1973

Mr. Davis of Georgia introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out "and" following the semicolon in paragraph (11) and adding at the end thereof the following new paragraphs:

"(13) provide a system for the receipt, investigation, and determination of complaints and grievances submitted by law enforcement officers of the State, units of general local government and public agencies; and

"(14) provide for the formulation of a 'Law Enforcement Officers' Bill of Rights' which, if enacted into law, would provide statutory protection for the constitutional rights and privileges of all law enforcement officers of the State, units of general local government and public agencies."

SEC. 2. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by redesignating parts E and F as parts F and G, respectively, and inserting after part D the following new part:

PART E—LAW ENFORCEMENT OFFICERS' GRIEVANCE SYSTEM AND BILL OF RIGHTS

SEC. 351. Beginning one year after the date of enactment of this section, no grant under part B or part C of this title shall be made to any State, unit of general local government or public agency unless such State, unit of general local government or public agency has established and put into operation a system for the receipt, investigation, and determination of complaints and grievances submitted by law enforcement officers of the State, units of general local government and public agencies operating within the State and has enacted into law a "Law Enforcement Officers' Bill of Rights" which includes in its coverage all law enforcement officers of the State, units of general local government and public agencies operating within the State.

Bill of Rights

The Law Enforcement Officers' Bill of Rights shall provide law enforcement officers of such State, units of general local government and public agencies statutory protection for certain rights enjoyed by other citizens. The bill of rights shall provide, but shall not be limited to, the following:

"(A) POLITICAL ACTIVITY BY LAW ENFORCEMENT OFFICERS.—Except when on duty or when acting in his official capacity, no law enforcement officer shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

"(B) RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement officer is under investigation or subjected to interrogation by members of his or any other investigative agency. for any reason which could lead to disciplinary action, demotion, dismissal, or criminal charges, such investigation or interrogation shall be conducted under the following conditions:

"(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

"(2) The investigation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer.

"(3) The law enforcement officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.

"(4) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation, and he shall be informed of the names of all complainants.

"(5) No complaint by a civilian against a police officer shall be entertained, nor any investigation of such complaint be held, unless the complaint be duly sworn to by the complainant before an official authorized to administer oaths.

"(6) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

"(7) The law enforcement officer under interrogation shall not be subjected to offensive language or threatened with transfer, dismissal, or disciplinary action. No promise or reward shall be made as an inducement to answering any questions.

"(8) The complete interrogation of a law enforcement officer, including all recess periods, shall be recorded, and there shall be no unrecorded questions or statements.

"(9) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

"(10) At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other representative of his choice who shall be present at all times during such interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement service.

"(C) REPRESENTATION ON COMPLAINT REVIEW BOARDS.—Whenever a police complaint review board is established which has or will have in its membership other than law enforcement officers, such board shall include in its membership a proportionate number of representatives of the law enforcement agency or agencies concerned.

"(D) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS.—Law enforcement officers shall have the right, and be given assistance when requested, to bring civil suit against any person, group of persons or any organization or corporation or the heads of such organizations or corporations, for damages suffered, either pecuniary or otherwise, or for abridgment of their civil rights arising out of the officer's performance of official duties.

"(E) DISCLOSURE OF FINANCES.—No law enforcement officer shall be required or requested, for purposes of assignment or other personnel action, to disclose any item of his property income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his family or household), unless such information is obtained under proper legal procedures or tends to indicate a conflict of interest with respect to the performance of his official duties. This paragraph shall not prevent inquiries made by authorized agents of a tax collecting agency in accordance with acceptable and legally established procedures.

"(F) NOTICE OF DISCIPLINARY ACTION.—No dismissal, demotion, transfer, reassignment, or other personnel action which might result in loss of pay or benefits or which might otherwise be considered a punitive measure shall be taken against a law enforcement officer of the State, unit of general local government or public agency unless such law enforcement officer is notified of the action and the reason or reasons therefor prior to the effective date of such action.

"(G) RETALIATION FOR EXERCISING RIGHTS.—No law enforcement officer shall be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise be discriminated against in regard to his employment, or be threatened with any such treatment, by reason of his exercise of the rights granted in the law enforcement officers' bill of rights.

"(H) LAW ENFORCEMENT OFFICERS' GRIEVANCE COMMISSION.—With respect to complaints and grievances on the part of the law enforcement officers:

"(1) There shall be established in each State and unit of general local government a commission composed of an equal number of representatives of government, law enforcement agencies, and the general public which shall have the authority and duty to receive, investigate, and determine complaints and grievances arising from claimed infringements of rights submitted to it in writing by, or on behalf of, any law enforcement officer of the State, unit of general local government or public agency operating within the State.

"(2) Any certified or recognized employee organization representing law enforcement officers of a State, unit of general local government or public agency, when requested in writing by a law enforcement officer, may act on behalf of such officer regarding the filing and processing of complaints submitted to such commission. Certified or recognized employee organizations may also initiate actions with such commission on its own initiative if the complaint or matter in question involves one or more law enforcement officers in its organization.

"(3) Complaints and grievances may be against any person or group of persons or any organization or corporation or the heads of such organizations or corporations; officials or employees of the department or agency of the law enforcement officer making the complaint, or of any other local, State or Federal department or investigating commission or other law enforcement agency operating in the State.

"(4) The commission shall be empowered to hold hearings, take testimony under oath, issue subpenas, issue cease and desist orders, and institute actions in appropriate State court in cases of noncompliance.

"(I) In addition to any procedures available to law enforcement officers regarding the filing of complaints and grievances as established in this section, any law enforcement officer may institute an action in a civil court to obtain redress of such grievances."

93D CONGRESS
1ST SESSION

H. R. 4598

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1973

Mr. BIAGGI (for himself, Mr. BYRON, Mr. LENT, Mr. FORSYTHE, Mr. JONES of North Carolina, Mr. BEVILL, Mr. REID, Mr. PEPPER, Mr. DORN, Mr. PRICE of Illinois, Mr. KEMP, Mr. DANIELSON, Mr. VIGORITO, Mr. ROBERTS, Mr. CHAPPELL, Mr. WYDLER, Mr. FISH, Mr. HOSMER, Mr. ROE, Mr. WILLIAM D. FORD, Mr. DENHOLM, Mr. MOLLOHAN, Mr. RONCALLO of New York, Mr. LEHMAN, and Mr. MICHEL) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out "and" following the semicolon in paragraph (11) and adding at the end thereof the following new paragraphs:

I

"(13) provide a system for the receipt, investigation, and determination of complaints and grievances submitted by law enforcement officers of the State, units of general local government and public agencies; and

"(14) provide for the formulation of a 'law enforcement officers' bill of rights' which, if enacted into law, would provide statutory protection for the constitutional rights and privileges of all law enforcement officers of the State, units of general local government, and public agencies."

SEC. 2. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by redesignating parts E and F as parts F and G, respectively, and inserting after part D the following new part:

"PART E—LAW ENFORCEMENT OFFICERS' GRIEVANCE SYSTEM AND BILL OF RIGHTS

"SEC. 351. Beginning one year after the date of enactment of this section, no grant under part B or part C of this title shall be made to any State, unit of general local government or public agency unless such State, unit of general local government or public agency has established and put into operation a system for the receipt, investigation, and determination of complaints and grievances submitted by law enforcement officers of the State, units of general local government, and public agencies operating within the State and has enacted into law a 'law enforcement officers' bill of rights' which includes in its coverage all law enforcement officers of the State, units of general local government and public agencies operating within the State.

"BILL OF RIGHTS

"The law enforcement officers' bill of rights shall provide law enforcement officers of such State, units of general local government, and public agencies statutory protection for certain rights enjoyed by other citizens. The bill of rights shall provide, but shall not be limited to, the following:

"(A) POLITICAL ACTIVITY BY LAW ENFORCEMENT OFFICERS.—Except when on duty or when acting in his official capacity, no law enforcement officer shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

"(B) RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement officer is under investigation or subjected to interrogation by members of his or any other investigative agency, for any reason which could lead to disciplinary action, demotion, dismissal, or criminal charges, such investigation or interrogation shall be conducted under the following conditions:

"(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

"(2) The investigation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer.

"(3) The law enforcement officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.

"(4) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation, and he shall be informed of the names of all complainants.

"(5) No complaint by a civilian against a police officer shall be entertained, nor any investigation of such complaint be held, unless the complaint be duly sworn to by the complainant before an official authorized to administer oaths.

"(6) Interrogating session shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

"(7) The law enforcement officer under interrogation shall not be subjected to offensive language or threatened with transfer, dismissal, or disciplinary action. No promise or reward shall be made as an inducement to answering any questions.

"(8) The complete interrogation of a law enforcement officer, including all recess periods, shall be recorded, and there shall be no unrecorded questions or statements.

"(9) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

"(10) At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other representative of his choice who shall be present at all times during such interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement service.

"(C) REPRESENTATION ON COMPLAINT REVIEW BOARDS.—Whenever a police complaint review board is established which has or will have in its membership other than law enforcement officers, such board shall include in its membership a proportionate number of representatives of the law enforcement agency or agencies concerned.

"(D) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS.—Law enforcement officers shall have the right, and be given assistance when requested, to bring civil suit against any person, group of persons or any organization or corporation or the heads of such organizations or corporations, for damages suffered, either pecuniary or otherwise, or for abridgment of their civil rights arising out of the officer's performance of official duties.

"(E) DISCLOSURE OF FINANCES.—No law enforcement officer shall be required or requested, for purposes of assignment or other personnel action, to disclose any item of his property income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his family or household), unless such information is obtained under proper legal procedures or tends to indicate a conflict of interest with respect to the performance of his official duties. This paragraph shall not prevent inquiries made by authorized agents of a tax collecting agency in accordance with acceptable and legally established procedures.

"(F) NOTICE OF DISCIPLINARY ACTION.—No dismissal, demotion, transfer, reassignment, or other personnel action which might result in loss of pay or benefits or which might otherwise be considered a punitive measure shall be taken against a law enforcement officer of the State, unit of general local government or public agency unless such law enforcement officer is notified of the action and the reason or reasons therefor prior to the effective date of such action.

"(G) Retaliation for Exercising Rights.—No law enforcement officer shall be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise be discriminated against in regard to his employment, or be threatened with any such treatment, by reason of his exercise of the rights granted in the law enforcement officers' bill of rights.

"(H) Law Enforcement Officers' Grievance Commission.—With respect to complaints and grievances on the part of the law enforcement officers:

"(1) There shall be established in each State and unit of general local government a commission composed of an equal number of representatives of government, law enforcement agencies, and the general public which shall have the authority and duty to receive, investigate, and determine complaints and grievances arising from claimed infringements of rights submitted to it in writing by, or on behalf of, any law enforcement officer of the State, unit of general local government or public agency operating within the State.

"(2) Any certified or recognized employee organization representing law enforcement officers of a State, unit of general local government or public agency, when requested in writing by a law enforcement officer, may act on behalf of such officer regarding the filing and processing of complaints submitted to such commission. Certified or recognized employee organizations may also initiate actions with such commission on its own initiative if the complaint or matter in question involves one or more law enforcement officers in its organization.

"(3) Complaints and grievances may be against any person or group of persons or any organization or corporation or the heads of such organizations or corporations; officials or employees of the department or agency of the law enforcement officer making the complaint, or of any other local, State or Federal department or investigating commission or other law enforcement agency operating in the State.

"(4) The commission shall be empowered to hold hearings, take testimony under oath, issue subpenas, issue cease and desist orders, and institute actions in appropriate State court in cases of noncompliance.

"(I) In addition to any procedures available to law enforcement officers regarding the filing of complaints and grievances as established in this section, any law enforcement officer may institute an action in a civil court to obtain redress of such grievances."

93d CONGRESS
1st Session

H. R. 6449

IN THE HOUSE OF REPRESENTATIVES

April 2, 1973

Mr. McClory (for himself, Mr. Smith of New York, Mr. Sandman, Mr. Railsback, Mr. Fish, Mr. Hogan, and Mr. Moorhead of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

"Public Safety Officers' Benefits Act of 1973."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Safety Officers' Benefits Act of 1973."

Sec. 2. Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amonded, is amended by adding at the end thereof the following new part:

"PART J—DEATH BENEFITS FOR PUBLIC SAFETY OFFICERS

"DEFINITIONS

"Sec. 701. As used in this part—

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"(1) 'child' means any natural, illegitimate, adopted, or posthumous child, or stepchild of a deceased public safety officer who is—

"(A) under eighteen years of age; or

"(B) over eighteen years of age and incapable of self-support because of physical or mental disability; or

"(C) over eighteen years of age and a student as defined by section 8101 of title 5, United States Code;

"(2) 'criminal act' means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication, or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime;

"(3) 'dependent' means wholly or substantially reliant for support upon the income of a deceased public safety officer;

"(4) 'line of duty' means within the scope of employment or service;

"(5) 'public safety officer' means a person serving a public agency, with or without compensation, in any activity pertaining to—

"(A) the enforcement of the criminal laws, or the prevention, control, reduction, or investigation of crime; or

"(B) a correctional program, facility, or institution where the activity is determined by the Administration to be potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

"(C) a court having criminal or juvenile delinquent jurisdiction where the activity is determined by the Administration to be potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

"(D) firefighting.

"RECIPIENTS

"SEC. 702. Upon a finding by the Administration that a public safety officer has been killed in the line of duty and the proximate cause of such death was a criminal act or apparent criminal act, the Administration shall pay a gratuity of $50,000 to the eligible survivor or survivors in the following order of precedence:

"(1) if there is no surviving dependent child of such officer to the surviving dependent spouse of such officer;

"(2) if there is a surviving dependent child or children and a surviving dependent spouse of such officer, one-half to the surviving dependent child or children of such officer in equal shares and one-half to the surviving dependent spouse of such officer;

"(3) if there is no surviving dependent spouse to the dependent child or children of such officer in equal shares;

"(4) if none of the above, to the dependent parent or parents of such officer in equal shares; or

"(5) if none of the above, to the dependent person or persons in equal shares who are blood relatives of such officer or who were living in his household.

INTERIM BENEFITS

"SEC. 703. (a) Whenever the Administration determines, upon a showing of need and prior to taking final action, that a death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding $3,000 to the person or persons entitled to receive a benefit under section 702 of this part.

"(b) The amount of any interim benefit paid under subsection (a) of this section shall be deducted from the amount of any final benefit paid to such person or persons.

"(c) Where there is no final benefit paid, the recipient of any interim benefit paid under subsection (a) of this section shall be liable for repayment of such amount. The Administration may waive all or part of such repayment, and shall consider for this purpose the hardship which would result from repayment.

"LIMITATIONS

"SEC. 704. (a) No benefit shall be paid under this part—

"(1) if the death was caused by the intentional misconduct of the public safety officer or by the officer's intention to bring about his death; or

"(2) if the actions of any person who would otherwise be entitled to a benefit under this part were a substantial contributing factor to the death of the public safety officer.

"(b) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, but shall be reduced by—

"(1) payments authorized by section 8191 of title 5, United States Code;

"(2) payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, § 4–531(1));

"(3) gratuitous lump-sum death benefits authorized by a State, or unit of general local government without contribution by the public safety officer, but not including insurance or workmen's compensation benefits;

"(4) amounts authorized under any Federal program, or program of a State or unit of general local government receiving Federal assistance under this title which provides for the compensation of victims of crime.

"(c) No benefit paid under this part shall be subject to execution or attachment.

"PROCEDURE

"SEC. 705. (a) In the event of the death of a public safety officer serving a State or unit of general local government, the notification of such death shall be filed with the Governor or the highest executive officer of the State.

"(b) The Governor or the highest executive officer of a State upon receipt of notification of the death of a public safety officer, shall promptly notify the Administration of the pendency of a certification, and, after due investigation, shall certify to the Administration all facts relevant to the death upon which the benefit may be paid.

"(c) The Administration upon receipt of certification by a Governor or the highest executive officer of a State shall determine if a benefit is due, and, if so, to whom and in what amounts.

"REGULATIONS

"SEC. 706. The Administration is authorized to establish such rules, regulations, and procedures as may be necessary to carry out the purposes of this Act."

MISCELLANEOUS PROVISIONS

SEC. 3. Section 520 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by inserting "(a)" immediately after "520" and by adding at the end thereof the following new subsection:

"(b) There is authorized to be appropriated in each fiscal year such sums as may be necessary to carry out the purposes of part J."

SEC. 4. Until specific appropriations are made for carrying out the purposes of this Act, any appropriation made to the Department of Justice or the Law Enforcement Assistance Administration for grants, activities, or contracts shall, in the discretion of the Attorney General, be available for payments of obligations arising under this Act.

SEC. 5. If the provisions of any part of this Act are found invalid or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

Sec. 6. This Act shall become effective and apply to acts and deaths occurring on or after the date of enactment of this Act.

Mr. EILBERG. Mr. Keating?

Mr. KEATING. I would merely like to add to the chairman's comments by saying that I feel it is very important that during these hearings we look at the broad view and put the police and firemen in perspective with the FBI, military, and others who serve the public. It is my hope that after these hearings we can write a bill that will not increase Federal interference with local police; but will be an effective program.

I have no questions at this time but am anxious to hear from the witnesses who are scheduled for today.

Mr. EILBERG. For the record, today's hearings include actually two separate subjects: (1) public safety officers' benefits; and (2) the law enforcement officers' bill of rights. We set this up in this fashion to see what kind of interest there would be, and if the need arises, the subcommittee will have to arrange for further hearings beyond this morning's or today's session. There are a few Members who have come here to submit statements: Congressman John Murphy of New York submitted a statement in connection with the bill of rights legislation. Congressman Joseph Addabbo of New York has submitted a statement in connection with the bill of rights legislation. Congressman William Chappell has submitted a statement in connection with the bill of rights legislation.

[The prepared statements of Hon. John M. Murphy, Hon. Joseph P. Addabbo, and Hon. William Chappell, Jr., follow:]

STATEMENT OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and members of the committee: One of the bravest groups of public servants in America are our policemen. It is our policemen who make it possible for every American citizen to enjoy the liberty and freedom given to him by our constitution. Without the policeman's dedication and profound respect and understanding of the law all of us would be living in a state of anarchy. Even the best of laws have no value unless they are courageously and consciously enforced. Our policemen perform the invaluable task of enforcing the law and, in so doing, they have become the living representatives of the law to the American people.

The job they perform is by no means easy. In enforcing and representing the law to our people policemen are often subject to danger and to resentment. Naturally, policemen are not infallible and they sometimes make mistakes. However, for the most part they are courageous and brave men. It is unfortunate that in the past couple of years our policemen have become the targets of resentment and hostility. As a consequence, policemen have been denied a number of rights which other citizens enjoy. Among the rights they have been denied are the following:

> They have not been able to freely engage in political activity when off-duty.
>
> When under investigation police officers are often interrogated unjustly and without being informed of their rights.
>
> Policemen do not have a legitimate source to which they can register their complaints.
>
> Policemen are often not informed of dismissal, demotion, transfer, reassignment or other personnel actions which may result in a loss of payments or benefits.

The Policeman's Bill of Rights would remedy these injustices. The Bill of Rights not only protects the policeman's right to engage in political activity and his right to a fair investigation but it also establishes a police complaint board. The creation of a police review board is of prime importance because it will insure that policemen have a legitimate place to air their grievances and to have those grievances quickly and fairly acted upon. In this way the police force as a whole will be able to operate more effectively and efficiently.

Yet another important area of consideration is compensation benefits for policemen who are injured or killed in the line of duty. H.R. 12 makes a good beginning in this matter but it does not go far enough. Not only should the families of policemen be compensated if an officer is killed in the line of duty but equally important, a policemen should receive compensation if he is injured but not fatally, in the line of duty.

As we all know, the policeman's job has become increasingly dangerous in the past couple of years. Every time a policeman patrols our urban streets he takes the risk of being accosted. Very few other jobs involve such a high risk factor. It is only fair that the policeman receive just compensation for taking these dangerous risks.

I strongly believe that it is time that we recognized the courageous and dedicated service our policemen perform each and every day, and that we act in such a way as to encourage the continuation of these services.

Thank you.

STATEMENT OF HON. JOSEPH P. ADDABBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I am Congressman Joseph P. Addabbo of the Seventh Congressional District of New York, and I appear here today to express my strong support for the bill, H.R. 4600, the Law Enforcement Officers' Bill of Rights.

I, and over 100 of my Colleagues, have co-sponsored this bill which was originally authored by my Colleague from New York, Mr. Biaggi. I would hope the measure will be given prompt and complete consideration by the Committee, and will be brought out for consideration by the full House early this year.

The purpose of the bill is quite simple in that it merely extends to police officers the same rights as all citizens have, equal protection under the law.

The bill would require that states applying for federal grants or loans include a provision in their state law extending those rights to law enforcement officers.

The purpose of lawmaking, it seems to me, is fundamentally to ensure that all citizens receive justice in as pure a form as humans can create. It seems obvious to me that allowing policemen the right to counsel at departmental hearings, or providing a system in which an officer may appeal arbitrary decisions of those in authority, goes a needed step further in assuring justice.

Policemen, in their ability to air grievances against citizens, superiors or governmental departments, are restricted presently. In that sense, they are less free than a civilian job-holder who may appeal to a union representative or to a governmental department for assistance. In that sense, the policeman is a member of a minority group and needs remedial legislation from the Congress in order to firmly establish his rights under the law.

The police associations from around the nation have indicated many abuses suffered by law enforcement officers as a result of the failure of Congress to enact remedial legislation. It is time that we in the House of Representatives acted to provide this simple remedy for injustice.

How can anyone argue with the right of a policeman to recognize his civil rights when he is the subject of interrogation and investigation? Can we deny them the right to bring civil action against others when their civil rights have been violated during the performance of their duties?

Is it too much to ask that a grievance commission be established in each state to hear and to judge a policeman's complaints of infringement of his civil rights?

I think those are rights that should be afforded every citizen of this nation. Yet, the fact of life today is that a man who is asked to risk his life every time he pulls on that uniform and goes onto the street may not have representation at a departmental hearing, may not bring a civil action against others and too often, has no recourse against departmental decisions. It is time we bring these sorry practices to a prompt and final end.

STATEMENT OF HON. WILLIAM CHAPPELL, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I thank you for the opportunity to appear before this subcommittee today in support of H.R. 4598. I strongly feel that we need this amendment to the Omnibus Crime Control and Safe Streets Act of 1968 to provide for the rights of our Nation's policemen.

The time is long overdue for us, as American citizens, to give to those who enforce the laws of the country and make it a safer place for us to live, the opportunity to exercise certain rights enjoyed by other citizens. Policemen have been the object of a great deal of discrimination for many years, unable to truly express their grievances and opinions, and it is time for positive action to be taken.

I have a high regard and deep respect for my colleague and sponsor of this bill, Congressman Biaggi. If any Member of Congress is able to speak on behalf of the law enforcement officers of this country, it is he. I am pleased to join him in his appeal to greatly enhance the position of these officers.

The system for the redress of law enforcement officers' grievances and for the establishment of law enforcement officers' bill of rights in each state included in H.R. 4598 is what is necessary for us to accomplish our goal of protecting the fundamental rights and privileges of all local law enforcement officers of the State, units of general local government and public agencies.

As provided for in the bill, these officers should be able to openly engage in political activity when off duty, have a fair representation on all complaint review boards, bring civil suits arising out of performance of official duties, and be advised of any punitive measures taken against him prior to the effective date. These are just good examples of the benefits which would be gained from this bill.

Mr. Chairman, as a co-sponsor of this bill, I sincerely hope that your subcommittee will favorably consider H.R. 4598.

Mr. Eilberg. And I would like to recognize for a very brief statement, Congressman George O'Brien of Illinois, and I wish he would step forward now.

TESTIMONY OF HON. GEORGE M. O'BRIEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. O'Brien. Thank you, Mr. Chairman. I, too, have a conflict. I would like to stay but I cannot.

I would just like the record to reflect that I support H.R. 4600, the officers bill of rights. I think it is good legislation. I would like to have the record reflect that.

Thank you very much.

Mr. Eilberg. You have no prepared statement?

Mr. O'Brien. No, I have not. I merely wish the record to show that I support the legislation.

Mr. Eilberg. It is my pleasure to introduce a colleague on the Judiciary Committee, the Representative from Utah, the Honorable Wayne Owens. Would you kindly step forward, Mr. Owens.

TESTIMONY OF HON. WAYNE OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. Owens. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, I am pleased to be here this morning to testify in support of H.R. 7271, which I introduced, and similar bills which are before you, to provide benefits to survivors of public safety officers who die in the performance of their duty.

I would like to consider what it is we call upon our public safety officers to do, and what rewards they are offered for carrying out these duties.

Firemen, including members of organized volunteer fire departments, put their lives on the line each time they answer a call to put out a fire. In order to protect the property and lives of others, they expose themselves to a constant risk of injury and death. And yet, we expect to attract intelligent men of courage and skill to this dangerous profession, by paying them less sometimes, than garbage collectors and making almost no provision for the security of their wives and dependents in the event that tragedy claims their lives.

Similarly, that policemen risk their lives daily in safeguarding the rights, property, and lives of all citizens is too plain to require much elaboration. A law enforcement officer sought for the commission of a crime, or as a material witness to a crime; or engaged in guarding a person accused of a crime or held as a material witness; or engaged in the prevention of the commission of a crime; or in numerous other ways, in the performance of his duty, risks death resulting from some criminal act.

Nonetheless, we too often overlook the extremely broad range of skills a policeman must acquire. He is required to be an expert in the law, and in psychology; a protector of public safety; a prosecutor of crime; a guardian of civil liberty. And yet, instead of universal respect, the community and its politicians treat policemen ambivalently and frequently as a scapegoat for the problems of crime.

Forty years ago August Vollmer, a former police chief who became the first professor of police administration in America, said:

> The policeman is denounced by the public, criticized by preachers, ridiculed in the movies, berated by the newspapers and unsupported by prosecuting officers and judges. He is shunned by the respectables, hated by criminals, deceived by everyone, kicked around like a football by brainless or crooked politicians. He is exposed to countless temptations and dangers, condemned when he enforces the law and dismissed when he doesn't. He is supposed to possess the qualifications of a soldier, doctor, lawyer, diplomat and educator, with renumeration less then a daily laborer. How many of us could fulfill the demands of this super-human role?

The quality of the entire criminal justice system turns on the quality of the police. Clearly, we need the ability to recruit and retain as police officers, college graduates as well as high school graduates. If it is to be possible to do that, and in numbers sufficient to meet present and future needs, then benefits offered policemen must be progressive and competitive with those offered by other professions seeking to employ people with the same talent.

Inadequate compensation has two effects upon the ability to recruit and retain people for this profession. First, it makes impossible the task of attracting sufficient people of the caliber required to perform one of the most difficult and important functions of our society. Second, it is taken as evidence of the contempt in which police are held by the public and politicians.

There is a desperate need to attract people to the ranks of our police departments. A majority of the police departments in the country are operating below authorized strength. Turnover is an even greater problem than recruitment. And we must face the fact that the mass of police officers recruited just after World War II will reach retirement age at the end of this decade.

Mr. Chairman, the need for enactment of the kind of legislation before the subcommittee today is thus twofold. It is clearly required to provide a measure of security for the families of those public safety officers who are going to lose their lives while pursuing public duties.

Because those duties are public—because the work of public safety officers is a direct and inestimable benefit to all citizens—it is entirely appropriate that the Congress provide funds for the needs of such families. In addition, I have tried to point out that this legislation, by creating an important new financial incentive to become a public safety officer, is also needed to correct a deplorable and dangerous situation. That is, we have heretofore failed to offer financial rewards and benefits commensurate with the risks and range of skills required in two professions whose health is vital to the safety of us all. Unless we act to correct this situation, we shall have to pay for our past neglect, not merely in dollars, whose sums will far outstrip the cost under this bill, but in the far harder coinage of fear and human suffering.

Finally, Mr. Chairman, I would like to urge the subcommittee favorably to consider an amendment to these bills, whose effect would be to require payment of a sum identical to the death benefit, to public safety officers who as the result of a personal injury sustained in the performance of duty become permanently and totally disabled. Such men and their families stand in need of the same provision for their security as survivors of public safety officers who die in the performance of their duty.

Thank you, Mr. Chairman.

Mr. Eilberg. Thank you, Mr. Owens, for a very enlightening statement.

Mr. Keating. May I ask one question?

Mr. Eilberg. Yes, Mr. Keating.

Mr. Keating. Mr. Owens, first, I think you for your very excellent statement. How do you define public safety officers?

Mr. Owens. For purposes of the legislation, I introduced, I considered firemen—I mentioned volunteer firemen in here. But I am not convinced they should be included. I think professional firemen and professional policemen primarily fit the category, as I would see it.

Mr. Keating. I see where you mentioned voluntary firemen, and that is why I wondered to what extent you were including such persons in the safety field.

Mr. Owens. It has been my thinking—I am sure the committee will think more deeply about that—but it has been my thinking that it should be the professionals, those who are hired. The real problem, it seems to me, is the recruitment of competent people in these public safety fields.

Mr. Keating. I have no further questions, Mr. Chairman.

Mr. Eilberg. Mr. Owens, in the last session, we gave consideration to many bills with different approaches and one of the most difficult questions that the subcommittee and the full committee had to resolve was the question of whether the death had to be the result of a criminal act or whether it should cover death in the performance of duty. I noticed that you take the position of the Chair. Would you care to elaborate on that, Mr. Owens?

Mr. Owens. I do not know what the percentages are, Mr. Chairman, between those who die other than by criminal act in the line of duty. But sometimes it is a mighty thin line when you come to solving the problem that I, in my mind, have isolated as the severe problem; that is, the real need for recruitment. On the problem of compensation for survivors, which again goes back to the recruitment problem, I think that is too fine a line to draw. If people are willing to undertake service in the public safety professions, it seems to me that if they die while performing their duties, it is irrelevant whether it is the result of a criminal act or not. They are very dead and their widows are very much widows, and their children very much left dependent.

If the subcommittee agrees that recruitment is the real reason why we should do this, why, we can justify doing it even though it is also within the police power, which normally we think of as being reserved to the States, and then I think that difference is without substance; it is a distinction without substance.

Mr. EILBERG. In listening to your statement, and perhaps I have overlooked it, I do not see any reference to firemen. Do you have a point of view regarding firemen?

Mr. OWENS. Yes; I think it is mentioned on the first page, Mr. Chairman. If it is not, it is an oversight because I do consider firemen in that same category as policemen.

Mr. EILBERG. Would you care to go into any further definition of law enforcement officers? What officers should be included? This is another area of difference.

Mr. OWENS. I can understand. I think that is a refinement the committee will have to look at very carefully. I think I will limit my testimony to the generalization, Mr. Chairman.

Mr. EILBERG. Another problem that the committee wrestled with in the last Congress was the question of whether to go into the area of disability—compensation for the disabled—which entails a variety of plans, insurance, et cetera. We ran into many problems in connection with those ideas. One line of thought with regard to the disabled was that perhaps this was more of a local or State problem; whereas the matter of crime is national and perhaps the local authorities should be handling compensation for the disabled. I just mention this as a line of thought by one witness which I remember. This will require tables of compensation and will require a good deal more work than the subcommittee has engaged in so far. Do you have any further reaction?

Mr. OWENS. I do not have any knowledge, Mr. Chairman, of what the tables would say the increased costs would be to compensate on this same basis those who become totally and permanently disabled in the course of their duties. I did strongly and do recommend that the subcommittee consider it and I hope it could be worked out.

There is a police officer in my State whose case was drawn to my attention some 2 or 3 months ago, who was shot while apprehending someone on the highway, who lay completely, permanently immobilized for life—totally and completely disabled—with a family, I think, of seven children. Mr. Chairman, his family is struggling very, very courageously to keep afloat. He is getting no compensation for being disabled. I would think that the justification of recruitment aimed at solving the national problem of crime, which is the ultimate problem, as you point out, that we are trying to get at, requires that you seriously study that, in my judgment, and I admit to the chairman, not having studied the tables, but my very strong reaction is that in terms of recruitment that would be very beneficial.

Mr. EILBERG. Do you feel that reserve or voluntary law enforcement officers should be included within the coverage of the legislation?

Mr. OWENS. I do not, offhand, Mr. Chairman. There, again, I would prefer the committee's judgment after you have heard a great deal of testimony, and I do not pretend to be an expert in that area. I would think the problem is primarily professionals rather than volunteers, although I understand clearly that the volunteer reserve officers are very helpful to the professionals.

Mr. EILBERG. Finally, is there any inclination or feeling on your part that any of the bills before the subcommittee, as far as you know, would endanger the independence of State and local police officers, or do you feel this represents a movement in the direction of a national police force?

Mr. OWENS. No, on that question, Mr. Chairman. I do not see that as being a hazard. I think it would be a great help. I think we, in the Congress, have a great obligation to help resolve the incredible inflationary rate of crime, and I think this bill is a valid step. Control remains, as it properly should, at the local levels. They would be assisted in recruitment and, therefore, I think provided valuable help in helping solve the crime problem.

Mr. EILBERG. Mr. Wiggins, do you have any questions?

Mr. WIGGINS. Thank you, Mr. Chairman. Yes, I do.

I appreciate your testimony, Mr. Owens. You have just responded to a question from the chairman that there would be no reasonable likelihood that the enactment of this legislation would lead to a national police force. Would you hold the same view if the Federal Government should assume the responsibility for the total compensation of police officers?

Mr. OWENS. No, I do not think I would. As a matter of fact, Mr. Wiggins, I see it in this role as being an insurer, and, therefore, giving an incentive. I do not see it as getting into the question of what qualifications would be required or how the police department should be managed. But I think in the situation you suggest, no, I do not favor in any sense a national police force, and I think if we took over the payment of compensation completely, I think that would be a real hazard.

Mr. WIGGINS. I understand you to say that if we were to assume total responsibility, there would be risk, but as to this element of compensation, namely, death benefits to survivors, that risk is not unacceptable?

Mr. OWENS. I do not see it.

Mr. WIGGINS. Would you agree, Mr. Owens, that the basic responsibility for providing adequate compensation for local police officers rests with local governments?

Mr. OWENS. Well, of course we, on the Judiciary Committee, deal yearly with the Law Enforcement Assistance Administration which I think has made a worthwhile effort toward helping at the local levels, and I feel there are very definite areas where the Federal Government can assist local agencies in their ability to counterattack the sophistication of crime. So, there are areas, I think, where the Federal Government should and can get involved, particularly in financing. But, I think the Constitution makes that breakdown quite clear, and I support that breakdown.

Mr. WIGGINS. Under the Law Enforcement Assistance Administration, the Federal role is a supportive role. It is not one that assumes the total responsibility. With respect to death benefits, however, we do not have before us a matching grant program but rather a total Federal program. Does that distinction disturb you?

Mr. OWENS. No, no. I think that there is—there is, obviously, a rather severe funding problem in my State and, particularly, in small communities. I think they are simply unable to pay for the costs required at this point to pay this type of insurance premium. I think it would be difficult for many of them.

Mr. WIGGINS. If a justification for this legislation is to make it easier for local law enforcement agencies to recruit competent personnel, are there not more direct ways to achieve that goal rather than peripherally, through some death benefit program? Could not the recruitment objective be more frontally attacked by providing greater incentives, such as higher wages? I think that would probably be the greatest inducement to recruitment. This is a very peripheral attack. Why do we not move frontally on the subject?

Mr. OWENS. Well, as the gentleman knows, under the LEAA they are allowed to use part of that to compensate police officers, totally, of course, within the control of the local agency. I have no further suggestions for ways, at least at this point, other than through the Law Enforcement Assistance Administration, than the one I presented to you today. It may be that the committee will, the subcommittee will recommend other ways. I am sorry that I have not any strong suggestions for the gentleman.

Mr. WIGGINS. If the primary responsibility rests with local government, and I think we agree on that point, are we not by this legislation, discouraging local governments from discharging their responsibility by, in effect, preempting the death benefit field?

Mr. OWENS. I doubt that you would find many police agencies or safety agencies, fire agencies, local governments with their fire departments, which might provide this type of benefit and I do not know any who do, but I suppose some do. I doubt you would find them discouraged by this type of legislation. I am sure they will find some place else to spend their money and be appreciative of this no strings attached type of assistance.

Mr. WIGGINS. If we assume a police agency that provides no death benefits to survivors at the present time, and this bill is enacted, is it not reasonable to assume that that police agency will not supplement the death benefit program, but will rely totally upon the Federal program and, in effect, will deem that its basic responsibility has been discharged by others?

Mr. OWENS. I suppose where there is interagency competition, you may find them outbidding each other with additional death benefits, but I have to tell you that in my district there are no death benefits at all.

Mr. WIGGINS. If a police agency provides a minimal benefit of $2,000, just for example, is there not a risk that the police agency will withdraw the local benefit and rely totally upon the Federal benefit?

Mr. OWENS. Oh, I would think there probably is, but I am not sure that I understand what the gentleman means by risk.

Mr. WIGGINS. Well, by risk I mean, is there not a possibility that the local police agency, which has heretofore imperfectly discharged a responsibility toward police officers, may view the Federal legislation as a preemption and will withdraw that support and place it somewhere else?

Mr. OWENS. I would say that that is a real probability, if a local agency is paying for compensation at the rate of $2,000 or $10,000 for an officer killed and we come up with a provision to pay $50,000. My guess is that they would discontinue their benefit. I am not sure I understand the hazard which the gentleman has suggested.

Mr. WIGGINS. Well, the hazard is that we——

Mr. OWENS. I am sure the agency will find another place to spend that money that they are paying for that compensation.

Mr. WIGGINS. I am not all that certain it will go into police departments and fire departments. The employing agency may find that it should go into roads, or education, or something not related to law enforcement.

Mr. OWENS. That would be a local responsibility, of course.

Mr. WIGGINS. The risk, however, is that it defeats the basic responsibility of the local government to take care of its own police officers and results in a shift of that responsibility to the Federal Government, which is a consequence both of us regard as not healthy.

I would like to explore in your testimony only one other point. You, I think quite accurately, have said that the paying of a death benefit to a police officer killed as the result of a criminal act is an illogical distinction since we are providing for survivors, and the hardship, the anguish, the travail of a widow of an officer who was not killed in a line-of-duty injury is just at great as one who is killed in the line of duty. Have I correctly paraphrased your testimony?

Mr. OWENS. Yes, I think so.

Mr. WIGGINS. Well, I understand you to say then that the legislation in that respect is illogical. To make it logical, one would extend the benefit, I gather, to all police officers regardless of how they happen to meet their death, so long as they were on active duty? Would you go along with that?

Mr. OWENS. That is what we have done, I think, generally, with most legislation. Workmen's compensation, for example. I think it makes sense.

Mr. WIGGINS. That would be a more logical approach if we are concerned about the situation of survivors. You mentioned that unfortunate family in your district. I am sure that the difficulties of that family would be just as great if her husband had died as a result of a heart attack, and all of the problems which she now is confronted with would exist, or if he had been injured as a result of an accident around the house. All of those problems would exist, is that not so?

Mr. OWENS. Yes. But it does not—but it is the recruitment problem. And I am not sure I made that point clear. It is the recruitment problem which is so critical. We do need, as police officers, and firemen, I think, to a lesser degree, highly qualified people. A police officer is, in effect, an attorney, and guardian of civil liberties, we well as the guardian of the meek and the poor, and those who are the victims of crime. We have got to have top people there, and the compensation problem is a serious one. We can get into this situation, in my opinion, without impinging upon the local agency and help to meet the obligation the public feels we have toward solving the crime problem by providing for their people.

Mr. Wiggins. I appreciate that. What I am trying to do, however, is to isolate the considerations and one consideration is recruitment, another consideration is our understandable concern for survivors. I am trying to focus only on that latter element at this time.

Mr. Owens. I understand that. I referred to survivors only as a part of the problem of recruitment.

Mr. Wiggins. Well, then, if it could be demonstrated, empirically, that recruitment is unaffected by benefits paid to survivors, would you withdraw your support of the legislation?

Mr. Owens. Well, all of the literature I am aware of in this field, public safety or any other field, indicates that compensation is a big factor in recruitment. I mean, I could not come to Congress if we were not being paid a livable salary. I have five children. I mean, if you could——

Mr. Wiggins. I am not sure you were aware when you ran for office, unless you were more knowledgeable than I, what death benefits might have been payable as a result of your death as a Member of Congress. I am not even sure what they are at this moment.

Mr. Owens. It is part of the overall picture. I just said that I have to have a livable income, or I could not have considered this type of public service.

Mr. Wiggins. You make a telling point that take-home compensation is a powerful inducement to recruitment. But, of course, we do not address that problem in this legislation.

Well, I will yield my time to someone else at this point.

Mr. Eilberg. Thank you, sir.

Mr. Fish?

Mr. Fish. Just one question of the witness. I am sorry I missed your main presentation. In my district we have many more volunteer firemen than we do peace officers or paid firemen, and I wondered what other recourse there would be for volunteer firemen, in a municipality such as the gentleman from California was talking about, discharging his responsibilities. They do not pay the volunteer firemen, and is it normal for them to provide free insurance or death benefits?

Mr. Owens. I know that in my district, and my experience is extremely limited and extremely narrow, that there is no compensation of this nature, either at the professional or volunteer level, and there are many communities. I have many small communities in the outer regions of my district, all of which are serviced by volunteer fire departments. I do not know what the tables would tell you, whether that would cost a great deal more. If it does not cost more, or if it costs almost no more to cover the volunteer agencies, then I would think that would be worth the subcommittee's consideration.

Right now, it is the professional problem, the big crime problems, the big fire problems, which are, basically, in the big cities, which are serviced by professional organizations, that is of greatest concern. And I am not sure I have answered the gentleman's question.

Mr. Fish. Well, I just think it would be an awful burden on very small rural areas which are serviced by volunteer firemen to have to undertake this burden.

Mr. Owens. You are asking whether I thought they would have to undertake this, if we do this for the professionals?

Mr. Fish. Or if we did not do it at all?

Mr. OWENS. Well, I do not think that they will simply because of the burden.

Thank you. That is all.

Mr. EILBERG. Mr. Owens, we thank you very much for your contribution here this morning.

Mr. OWENS. I thank the chairman and the subcommittee. I thank you for letting me appear.

STATEMENT OF HON. WAYNE OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. Chairman, members of the Subcommittee, I am pleased to be here this morning to testify in support of H.R. 7271, which I introduced, and similar bills which are before you, to provide benefits to survivors of public safety officers who die in the performance of their duty.

I would like to consider what it is we call upon our public safety officers to do, and what rewards they are offered for carrying out these duties.

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Finally, Mr. Chairman, I would like to urge the Subcommittee favorably to consider an amendment to these bills, whose effect would be to require payment of a sum identical to the death benefit, to public safety officers who as the result of a personal injury sustained in the performance of duty become permanently and totally disabled. Such men and their families stand in need of the same provision for their security as survivors of public safety officers who die in the performance of their duty.

Mr. Eilberg. Before I introduce the next witness, I have a statement from our colleague on the committee, Charles W. Sandman, Jr., which I would like to have placed in the record and, also, a statement from a member of the subcommittee, the Honorable Tom Railsback, which I would like to place in the record. Also at this point I would like to place in the record a statement from our colleague, Hon. Claude Pepper.

[The prepared statements of Hon. Charles W. Sandman, Jr., Hon. Tom Railsback, and Hon. Claude Pepper, follow:]

Statement by Hon. Charles W. Sandman, Jr., a Representative in Congress From the State of New Jersey

Mr. Chairman: I speak today as a sponsor and supporter of HR 4600 the so-called Law Enforcement Officers Bill of Rights.

This type of legislation is long over-due. Policemen are no different from anyone else except that they in many cases recently are not enjoying equal rights.

I don't have to tell you of the hazardous conditions under which they must work, nor do I have to go into detail of cases wherein the cop on the beat is forced to live with a double standard. In effect, because of the supercharged atmosphere today in the urban areas, the policeman becomes guilty until proven innocent.

I don't say that this bill will change the social problems prevailing today, but this bill will give the policeman a measure of protection he needs badly. It will give him a grievance procedure and specific rights while under charges.

The U.S. Supreme Court of the past few years has leaned over backward to protect the rights of the accused criminal. This is our chance to do something to protect the rights of the accused police. I strongly urge this committee to approve this bill amending the Safe Streets Act.

Its elemental thrust is one of fairness and equity for men who daily lay their lives on the line for each and every one of our citizens.

Statement by Hon. Tom Railsback, a Representative in Congress From the State of Illinois

Mr. Chairman, I commend the Subcommittee for holding hearings on the bill H.R. 12, a bill to provide benefits to survivors of public safety officers killed in the line of duty, and thank the Committee for permitting me to express my views. As you know, the Public Safety Officers' Benefits Act is very similar to legislation I have introduced in this Congress—H.R. 2396, H.R. 2397, and H.R. 6449.

Too often discussions about all aspects of public safety center around impersonal facts, vague legislative solutions, and government budgets. Seldom is enough concern given to the brave men and women who daily risk their lives attempting to make our streets and cities safe.

Policemen, firemen, and other public safety officers are constantly subjected to danger. In a single shift they are exposed to more risks than most of us will be in a lifetime. For example, almost 36,000 policemen were assaulted, beaten, shot, or stabbed in 1969. In that same year, 86 were killed by felonious criminal acts; 100 in 1970; and 125 in 1971. Over 100 firemen were killed during 1971 alone.

Most of these individuals are young men at the very age when family responsibility is especially great and before there has been sufficient time to build up financial protection. The average age of the victim is approximately 30; the most common age is 24. The median years of service is 5, and 15% of the victims have one year of service or less.

Despite the dangers they face, public safety officers' salaries remain relatively low. The average police officer or the average fireman earns less than $800 per month, hardly enough to provide for a family's future if the breadwinner meets an untimely death.

Death benefits for their survivors are virtually nonexistent. A recent survey, cited in hearings last year, showed that 18 States provide absolutely no financial assistance for the immediate survivors of law enforcement officers. The least we can do for these brave servants is to provide assistance so that if they are killed in the line of duty, their dependents will not be left in financial need. Without such assurance, we cannot expect to recruit and retain responsible family men and women into these increasingly hazardous jobs.

In June 1971, President Nixon recommended that legislation be enacted by the Congress that would grant $50,000 to the spouse and dependent children of a police officer killed in the line of duty. In recommending this proposal to the Congress, the Administration pointed out:

"The slaying of police officers in New York City and Washington, D.C. in recent weeks has shown to America the risk of lethal violence faced daily by peace offices in city after city across the country. The nature of the dangers police officers confront and the disparity in survivors benefits from State to State have led us to the conclusion that the Federal Government should provide a gratuity to the families of each municipal or state police officer killed while in the performance of duty, to serve as a federal floor for survivors benefits, and to be in addition to any other benefits due the family."

I was pleased to sponsor a bill that authorized the Law Enforcement Assistance Administration to make a grant of $50,000 to survivors of policemen killed in the line of duty. This would have been a small token of appreciation to those who expose themselves to danger for the safety of each of us.

Since I am convinced this assurance should be given to other law enforcement officials who take similar risks in the pursuit of a safer society, I have joined in introducing legislation to provide the same protection to firemen, correctional officers, court guards, judges, magistrates, prison guards, and prosecuting attorneys.

In recent years our law enforcement officials have not only had to confront a rising crime rate. but civil disorders, riots, and prison rebellions. Their jobs have not been easy, and oftentimes discouraging and unrewarding.

As a member of the Subcommittee which considered penal reform, I have heard firsthand of the tragedies which have occurred at Attica and other state penitentiaries, and the near tragedies which have threatened various Federal institutions. Adequate protection must also be afforded to the survivors of these correctional officers.

I urge the Subcommittee to provide benefits to survivors of public safety officers immediately. Public safety officers should not be asked to run the ultimate risk for society's security if society in turn will not be concerned with the consequences of their deaths.

The field of public safety is extremely difficult and frustrating. Approval of a bill of the nature I have described will assist in fulfilling society's moral obligation to those brave men and women who are willing to risk their lives in order to do something about our crime and safety problems.

Thank you for your time and consideration.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I am very pleased, as the former chairman of the House Select Committee on Crime, to have an opportunity to follow up before this distinguished legislative committee one of the areas of interest that developed during the extensive investigations of my committee into the crime problem throughout the country.

I had been aware, of course, of the fundamental nature of the police function in our society, in any society. But it became even clearer in my mind, as we heard the testimony of more than 1,000 witnesses in the four and one half years, just how much we owe to the dedicated law enforcement officers who daily risk their lives in the confrontation with the lawless and violent elements in our society.

I resolved, therefore, to do what I could to strengthen the public recognition of the importance of the police and to do what I could to see that their compensation, their benefits and their rights as public servants and as human beings were elevated and respected in accordance with the great service they perform for all of us.

The most obvious need is recognition of the ultimate sacrifice that law enforcement officers and their families make in our behalf. In 1973, 112 law enforcement officers were killed in the performance of their duty. And since about 1967 the number of deaths has been rising. As of yesterday (July 24), 76 policemen had already met their deaths on duty in the current year. Five good lawmen died in my own state of Florida last year. Two of them were murdered while responding to robbery alarms, one was killed attempting to investigate a suspicious looking vehicle, one lost his life in pursuit of an escaped prisoner who turned on him, and a wildlife officer on a stake-out was killed by an alledged poacher.

Each of the Florida officers were just doing their job. Like policemen, firemen and correctional officers throughout the country, they were killed while upholding their sworn vows of duty.

One may wonder why intelligent young men enter into a law enforcement career. But I have found from my own contact, as others who have studied the question have found, that most of those who go into law enforcement do so out of a desire to be of help. They are idealistically motivated and, according to a California study, show the same psychological profile as doctors and ministers.

If it were not for these highly motivated law enforcement and public safety officers, it would be impossible to perform the "dirty work" of our society.

Let us show our appreciation by authorizing, as H.R. 4307, which I am cosponsoring, would provide, the sum of $50,000 for the survivors of any public safety officer who is killed in the line of duty.

It has been said that killing a policeman is a "plain and simple murder." But it is much more than that. When anyone consciously attacks a policeman, he is attacking both an important symbol of organized society and an indispensible element of an organized and viable society. He attacks our body of laws. He attacks our democracy. He attacks each us in a very real way.

But we should limit our concern, Mr. Chairman, to those who make the ultimate sacrifice and to their families. We have an obligation to strengthen and support the men who daily do the work of law enforcement and run the risk of being spat upon, pillored, sued and otherwise abused and injured in the difficult confrontations that take place every day in every part of the country.

H.R. 4598, which I am cosponsoring, seeks to do this by amending the Omnibus Crime Control and Safe Streets Act to encourage the states to develop a "Law Enforcement Officers' Bill of Rights" and to establish effective grievance machinery for law enforcement officers.

The objective of this legislation is twofold. First, it seeks to assure law enforcement officers that they have, and that they will be truly free to exercise, those rights that are due every American citizen. In addition, it provides for proportionate police representation, as well as public participation, in State and local complaint review boards, and it seeks to protect law enforcement officers against unsubstantiated or nuisance complaints.

In order to protect America's freedom and liberty, law enforcement agencies have tried to enforce the law in a just and impartial manner. However, efforts to insure that policemen do not exhibit bias in the performance of their official duties have often resulted in the erosion of policemen's rights as individuals to participate fully during their off-duty hours in the democratic institutions their work is designed to protect. The Law Enforcement Officers' Bill of Rights guarantees policemen their right to take part in political activities if they choose to do so, or to seek redress through the courts for abuses of their civil rights, and to exercise these and other rights without fear of punitive disciplinary action or the loss of their job. Policemen's rights will be protected not only during their off-duty hours, but twenty-four hours a day. Any investigation of an officer carried out by his law enforcement agency after the passage of this new Bill of Rights will have to be conducted in a decent and open manner, free from the arbitrariness and coercion that unfortunately sometimes intrudes on such investigations today.

Under the Law Enforcement Officers' Bill of Rights, the complaints of officers and those of civilians will be received and investigated by agencies which are capable of making just determinations. This should take some of the tension out of police-community relations as well as foster a tremendous improvement in police morale.

Law enforcement officers work with diligence to preserve our rights as citizens. It is time that we make certain that they, too, are able to exercise their full rights and privileges as Americans.

Mr. Eilberg. I should say the statement by Congressman Sandman refers to the bill of rights legislation, and the statement by Congressman Railsback refers to the legislation providing for public safety officers' benefits.

I hope that Congressman Nichols will indulge the subcommittee for a moment because his colleague, who is sitting next to him, does not have a prepared statement and I understand he is prepared to make a very brief statement and we welcome from Texas our colleague, Jim Collins.

TESTIMONY OF HON. JAMES M. COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Collins. Thank you very much, Mr. Chairman.

Mr. Eilberg. You are welcome to step up, if you like.

Mr. Collins. Thank you. I came because of my strong support of the other bill that is also in consideration, but I just wanted to say——

Mr. Eilberg. Speaking of which bill?

Mr. Collins. H.R. 9035 that has been submitted by Mr. Biaggi of New York, which I think is one of the finest pieces of legislation coming before the House this year. I want to endorse H.R. 9035 in every way.

I would say this, to, in behalf of the special compensation, which is the bill that you have just discussed. I am reminded of the fact that we, in Congress, do receive $42,500 for our widows if we die, while we are in service. I would add that there should be a differential in that bill between whether they die in line of duty or from a normal cause of death, because I believe there is a big difference. When they die in the line of duty, they have died for everyone in the country which differs from normal causes of death. But I particularly wanted to have an opportunity to support the bill by Mr. Biaggi. I urge the committee to report out this policeman bill of rights.

Thank you, Mr. Chairman.

Mr. Eilberg. Thank you, Mr. Collins.

Mr. Keating. Thank you, Mr. Collins.

Mr. Eilberg. And regularly scheduled this morning is our colleague from Alabama, the Honorable Bill Nichols.

Kindly step forward, Bill.

TESTIMONY OF HON. WILLIAM NICHOLS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. NICHOLS. Thank you, Mr. Chairman. It is a privilege this morning to have the opportunity to appear before your committee to testify in behalf of the Public Safety Officers Benefit Act, H.R. 12.

As the sponsor of H.R. 874, which is almost identical to the legislation now under study by this body, I certainly want to go on record expressing my wholehearted support for the concept of providing financial compensation to the widows and dependents of public safety officers killed in the line of duty. Of course, as the committee knows, no amount of money can replace a husband or father who pays the supreme sacrifice for society. But, I feel that the $50,000 compensation provided for in this legislation would enable the survivors certainly to make a new beginning. It can enable the widow to provide for her family's well-being; it can enable the children to further their education, and—in an abstract sense—it can show the family that Americans care about their public safety officers.

When the average citizen spots a fire, he naturally calls the fire department and these public servants, either professional or volunteer, respond without, in many cases, knowing the nature of the call. They leave the fire station, their homes or their businesses with the full knowledge that they might not return and, according to the International Association of Firefighters, approximately 200 of them, Mr. Chairman, did not return in 1972.

Likewise, the police officer never knows what he is going to be facing when he goes on duty. He is well aware of the fact that he might be shot while investigating a crime, while stopping an automobile for a simple traffic violation or from ambush while on patrol. On October 25, 1972, officer Israel Gonzales of the Arlington County Police Department walked into a branch bank in nearby Crystal City while making an investigation. Officer Gonzales walked into the bank while a robbery was in progress and after firing several shots at two of the bandits, he was shot in the back by a third assailant and died instantly. Officer Gonzales began his day on October 25, in the same way most us did. However, we all returned home that night; he did not. In addition to Officer Gonzales, 111 of his colleagues did not return home in 1972.

Mr. Chairman, I am very concerned about the future of the families of these 112 law enforcement officers and 200 firemen who gave their lives while protecting society during 1972. I am sure that many of these officers did not have adequate insurance to provide for all the needs of their families. In order to assure that the survivors of these public servants do not face economic hardships in the future, I endorse the legislation now being considered by this subcommittee.

In closing, Mr. Chairman, and gentlemen of the committee, I would say I am no stranger to the concept embodied in this legislation. In 1969, while a member of the Alabama State Senate, I introduced similar legislation providing $10,000 compensation to surviving widows and orphans of firemen and policemen. This is Alabama law today, Mr. Chairman, and of all the legislation I have sponsored, I am perhaps proudest of this particular bill. It is my fervent hope that this legislation will be approved by this body and will go to become Federal law.

Mr. Eilberg. Thank you very much, Mr. Nichols.

Do you believe that the payment of the gratuity, if we adopt one, should be based upon a criminal act or be payable as a result of death in the line of duty?

Mr. Nichols. Mr. Chairman, I take the broad view on this. I think very definitely it ought to be payable in line of duty.

I might state to the committee, and in my own experience in my own State, these first two officers who died after this bill was signed by our Governor happened to be firemen. One was killed in a theater where he was fighting a fire, and the roof caved in on him, and the other was killed by a brick wall which collapsed and he died. And I had the privilege of personally presenting the check with my Governor to the widows of these brave people.

Mr. Eilberg. What is the amount again?

Mr. Nichols. $10,000 in my State, Mr. Chairman.

Mr. Eilberg. And do you think there is anything irregular in the Federal Government providing an additional $50,000?

Mr. Nichols. Absolutely not. I have listened to the questions propounded by our respected friends here on the committee and I, too, would be opposed to a police state at the Federal level. But, we are talking about compensation to widows and orphans and I just think it goes into an area that is somewhat apart from directing an officer as to how he should conduct his official duties. I just do not see that fear.

Mr. Eilberg. If we write legislation along these lines, do you think we should deduct the benefits made payable by local or State authorities?

Mr. Nichols. Absolutely not. I think it ought to be in addition to any amount payable after city, county, or State level.

Mr. Eilberg. And do you think this will help the recruiting effort in obtaining candidates for police officers and firemen?

Mr. Nichols. I would think it would be in some way helpful, Mr. Chairman, although I do not necessarily see it as a real boon to the recruiting effort. I think initial compensation has got to be underlying, but I think it is the way that this Congress and this country can say, "Fellows, we thank you for the job you do; the risks that you take every day in protecting us." The firemen and policemen are really soldiers in our era that we live in.

Mr. Eilberg. All right, Mr. Nichols, one other question and then I will pass along to the other members of the subcommittee.

How far do you think we ought to go in the definition of public safety officers? Do you think we should include wardens, guards, bailiffs?

Mr. Nichols. Well, I have listened to that question asked the previous witness, and at the risk of getting a slap from the volunteer people who perform these duties, I think you have to draw the line somewhere. And in my legislation I would envisage and, of course, would yield to the good judgment of the committee on this, but I would envisage that this bill ought to be broad enough to cover any enforcing officer who is on the regular payroll in the enforcement field. Yes, I think it should go to wardens. I think it should go to game people who enforce the game law, and I think it should go to the border patrol and even the park policemen here in the Nation's Capital.

Mr. Eilberg. What about the stenographer in the courtroom who is shot and killed by a defendant?

Mr. Nichols. Well, I have not considered that, Mr. Chairman. I do not want to——

Mr. Eilberg. I do not want to be too technical, but I want to point out the range of possibilities.

Mr. Nichols. I had not envisaged that it would go that far, Mr. Chairman.

Mr. Eilberg. Mr. Keating?

Mr. Keating. I thank the gentleman from Alabama for his testimony and his thoughtfulness in presenting it. And, frankly, for having the foresight in his legislative duties in the State legislature to do what I think State and local governments ought to do primarily, and should have done some time ago. So, I commend you for doing that and feel it is unfortunate that many States have not done it prior to this time.

Do you have any idea what death benefits there are for an FBI agent or Secret Service man?

Mr. Nichols. Mr. Keating, I must confess my ignorance. I do not.

Mr. Keating. Would you suggest they receive the same compensation if killed in the line of duty?

Mr. Nichols. I certainly would. Yes, sir. They are enforcement officers in my book, just like any policeman that walks his beat.

Mr. Keating. What about the serviceman in the Army, Navy, or the Air Force?

Mr. Nichols. No, sir. I do not think he would be covered under the type of legislation we are considering.

Mr. Keating. My question is, should he be?

Mr. Nichols. No, sir, I do not think he should be. We have insurance in the Armed Forces that is available to each and every man that wears the uniform. And if it is like it used to be, the officers are held responsible to see that every man has it.

Mr. Keating. Would you say, however, that the amount of the insurance should be the same as opposed to what they presently receive. Should it? Should he get less in the armed services than the person who is a public safety officer?

Mr. Nichols. I suspect that day in and day out, policemen have as many or more risks than the average man who wears the uniform, Mr. Keating.

Mr. Keating. What about when we are engaged in a war like Vietnam or Korea or something like that?

Mr. Nichols. Well, certainly, that is a different situation. I am thinking of the peacetime soldier, perhaps, more than I would be in a wartime situation.

Mr. Keating. Well, to pursue it one step further, if we were at war, would you suggest that they be compensated to the same degree, in the same amount of money?

Mr. Nichols. Well, no, sir, I would not. I think the armed services is a much broader field than that of the police officer and I do not see where we could—I just think from a money standpoint we would not want to get into that. I think it would be prohibitive, Mr. Keating.

Mr. Keating. Let me ask one more question.

On the question of the death penalty, which I——

Mr. Nichols. Death penalty?

Mr. KEATING. Death penalty. That is not directly related to the bill, and yet it is, in a way, because we are talking about the protection, really, of the law enforcement officers who protect the citizenry. Would you think the death penalty ought to be as necessary in the protection of the police officer or as helpful to them?

Mr. NICHOLS. Well, Mr. Keating, I agree with you. I think this may be somewhat related. I think it is a little aside from the bill that we are talking about. I strongly favor the death penalty in certain crimes, yes, sir.

Mr. KEATING. I yield back, Mr. Chairman.

Mr. EILBERG. Mr. Railsback, do you have any questions?

Mr. RAILSBACK. Mr. Chairman, I just want to commend our colleague for his interest. I thought he made a very fine statement.

Mr. NICHOLS. Thank you, Tom.

Mr. EILBERG. Mr. Wiggins?

Mr. WIGGINS. Thank you, Mr. Chairman.

I would like to explore a matter that was touched upon by our colleague and friend, Mr. Keating. You serve as a member of the Armed Services Committee?

Mr. NICHOLS. Yes, sir.

Mr. WIGGINS. And, as such, it is your committee's responsibility to to give consideration to adequate compensation for members of the armed services?

Mr. NICHOLS. Yes, sir.

Mr. WIGGINS. Would you describe for our record what death benefits are payable in the case of servicemen?

Mr. NICHOLS. Mr. Wiggins, I am sorry, I do not serve on this committee. I believe that—well, I am sure when you and I served in the military, it was $10,000 insurance policy that a man took at that time. It was not mandatory at that time. If a man had no dependents and he just did not want to take this $2 or $3 out of his payroll, he did not have to do it. But, it was strongly encouraged by the military at that time.

I regret to inform the gentleman that I just do not have that figure at my disposal right now.

Mr. WIGGINS. Well, I can supplement your personal knowledge. A national service life insurance policy was an optional right which servicemen had the privilege of subscribing to if they wished. It was a term life insurance policy. The usual face amount was $10,000. It might have been possible to take out a lesser amount, but that was the maximum then and, so far as I know, is still the maximum. The cost of that policy was charged directly to the serviceman and he paid for it——

Mr. NICHOLS. Yes, sir.

Mr. WIGGINS [continuing]. Without Federal contribution at all and the amount was based upon actuarial determinations involving age and other factors. My recollection is that in my case it was $6, $7, or $8, a month for $10,000 of national service life insurance. It is your best recollection that the policy which I have just described is still in force?

Mr. NICHOLS. It is my recollection that it is, yes, sir.

Mr. WIGGINS. Well, I think that reflects, then, a measure of the national concern for the survivors of servicemen who were killed while serving their country in terms of dollars. It is $10,000 without contribution at all by their employer, the Federal Government. It is evident, therefore, that what we envisage in this legislation for State and local law enforcement officers is a considerably greater benefit than we provide for our own employees; namely, servicemen. Is that not true and would you comment on the logic of that?

Mr. NICHOLS. Well, Mr. Wiggins, I do not know that I can go further into the logic of it, other than just to say this to you, and I believe the gentleman would agree with me. It is awfully difficult being a police officer in these days and times. I could not be one. You and I have seen them spat upon out here on the front steps of this Capitol and called all sorts of names. The gentleman from Utah, I think, had a very good description of the way police officers are looked at by some segments of our society and this is regrettable. They are our first line of defense in many, many respects and I believe that this Congress, and I believe that the American public shares a responsibility of saying to these guys, we appreciate the job that you do for us. That is the way I feel about them. I sleep better every night because there is a patrol car driving back and forth down my road routinely and I would not want to comment further on the differences that you seem to view in the dependents of a member of the armed services vis-a-vis the dependents of a man in uniform in the police forces.

Mr. EILBERG. Would the gentleman yield?

Mr. NICHOLS. I just think it is in order.

Mr. WIGGINS. I yield.

Mr. EILBERG. If you were to ask me that question and, of course, we will get into this in the executive session, Mr. Wiggins, my answer would include that we are faced with two entirely different situations, that of the serviceman and that of the police officer. I am concerned and I know all of us are concerned with crime and the apparently rising rate of crime. Sometimes we talk about the rate being less than the year before but the fact is that crime is perhaps the prime issue or maybe the second or third most important issue facing our country today. And I view crime as a national issue and, therefore, one that deserves special treatment. And if by what we are doing, we are helping to fight crime, I am supporting the concept of the bill and I am not sure that it necessarily relates to the serviceman question.

Now, of course, we could argue this back and forth, but I just wanted to know.

Mr. KEATING. Will the gentleman yield, or do you want to respond?

Mr. WIGGINS. Well, I will not respond because I am not the witness but maybe I can elicit an answer from the witness. Is it your view that the enactment of this legislation will in any way reduce the risk to police officers?

Mr. NICHOLS. No, sir, I do not believe it would reduce the risk.

Mr. WIGGINS. Is that not an adequate response, Mr. Chairman?

Mr. NICHOLS. I do not believe it would reduce the risk to police officers. But, I believe it would be very much appreciated by those people who wear the uniform.

Mr. WIGGINS. Well, there is no question about that.

Is it your view that if this legislation were enacted, the good will toward a police officer would be enhanced by those who spit upon him now?

Mr. NICHOLS. I think it would to some measure or degree be enhanced in the public eye; not with these people out here on the front steps of the Capitol, Mr. Wiggins. I am not sure we could change their viewpoint.

Mr. WIGGINS. Well, if it is desirable to reward the police officer by indicating a public appreciation of his service, would it not be more meaningful to give him $50,000 while he is alive in expression of our appreciation rather than give it to his widow?

Mr. NICHOLS. I would not want to do it that way, Mr. Wiggins. I think this would be the wrong way to do it. I think that you are getting into the area that you just expressed with Mr. Owens some concern about, that we might get into a police, a Federal police system, and I am very much against that. It ought to be at the local level. I strongly support a local police force.

Mr. WIGGINS. Now, Mr. Owens made a strong point, if not the central point of his testimony, that this legislation would aid in the recruitment of police officers by generally enlarging the total compensation package, and making it more attractive for a police officer to undertake that profession. In your work as a member of the Armed Services Committee, you have been dealing with the problem of recruitment?

Mr. NICHOLS. Yes, sir.

Mr. WIGGINS. And yet, as I understood you, you have not even dealt with the problem of death benefits?

Mr. NICHOLS. No, sir.

Mr. WIGGINS. Do I understand from that, that death benefits have not been a material consideration in recruitment as far as the armed services are concerned?

Mr. NICHOLS. Mr. Wiggins, I do not share all of the enthusiasm that my colleague who testified previously did on the package that we are considering here being a great boom toward recruitment. I think it is the take-home pay and this is the area that we have addressed, as you know, in the Armed Services Committee. We have doubled the pay of the soldier in order to entice him into an all-volunteer concept.

Mr. WIGGINS. I conclude that——

Mr. NICHOLS. And we have gone about as far as we could go in field, I might say.

Mr. WIGGINS [continuing]. I would conclude that if Congress wished to address itself to the problem of recruitment that we ought to be talking in terms of increasing the take-home pay of police officers rather than increasing the death benefit package.

Mr. NICHOLS. I am in agreement with you, Mr. Wiggins.

Mr. WIGGINS. That is all the questions I have.

Mr. EILBERG. Thank you, Mr. Wiggins.

Mr. Fish?

Mr. FISH. I would just like to ask the witness if he would not agree that one difference between the national service life insurance and the coverage of this bill, is that in this bill, the gratuity does not come into play unless the death results from injury in the performance of duty, whereas the national service life insurance—and many of us still have it after 25 years, after we are out of uniform—that benefit remains for our deaths from any natural cause?

Mr. Nichols. Well, those that continue to carry the coverage, this would be true; yes, sir.

Mr. Fish. Thank you, Mr. Chairman.

Mr. Eilberg. Ms. Holtzman, do you have any questions?

Ms. Holtzman. No, I don't, Mr. Chairman.

Mr. Eilberg. Mr. Nichols, we thank you very much.

Mr. Nichols. I thank the chairman and the committee for your time, Mr. Chairman.

[The prepared statement of Hon. William Nichols follows:]

Statement of the Hon. William Nichols, a Representative in Congress From the State of Alabama

Mr. Chairman, it is indeed a privilege to have the opportunity to appear before this distinguished subcommittee to testify in behalf of the Public Safety Officers Benefit Act, H.R. 12. As the sponsor of H.R. 874, which is almost identical to the legislation now under study by this body, I certainly want to go on record expressing my wholehearted support for the concept of providing financial compensation to the widows and dependents of public safety officers killed in the line of duty.

No amount of money can relace a husband or father who pays the supreme sacrifice for society, but the $50,000 compensation provided for in the legislation will enable the survivors to make a new beginning. It can enable the widow to provide for her family's well-being, it can enable the children to further their education and—in an abstract sense—it can show the family that Americans care about their public safety officers.

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Likewise, the police officer never knows what he is going to be facing when he goes on duty. He is well aware of the fact that he might be shot while investigating a crime, while stopping an automobile for a simple traffic violation or from ambush while on patrol. On October 25, 1972, Officer Israel Gonzales of the Arlington County Police Department walked into a branch bank in nearby Crystal City while making an investigation. Officer Gonzales walked into the bank while a robbery was in progress and after firing several shots at two of the bandits, he was shot in the back by a third assailant and died instantly. Officer Gonzales began his day on October 25, in the same way most of us do. However, we all returned home that night; he did not. In addition to Officer Gonzales, 111 of his colleagues did not return home in 1972.

Mr. Chairman, I am very concerned about the future of the families of 112 law enforcement officers and 200 firemen who gave their lives while protecting society during 1972. I am sure that many of these officers did not have adequate insurance to provide for all the needs of their families. In order to assure that the survivors of these public servants do not face economic hardships in the future, I endorse the legislation now being considered by this subcommittee.

Mr. Chairman, I am no stranger to the concept embodied in this legislation. In 1965, while a Member of the Alabama State Senate, I introduced similar legislation providing $10,000 compensation to surviving widows and orphans of firemen and policemen. This is Alabama law today and of all the legislation I have sponsored, I am perhaps proudest of this particular bill. It is my fervent hope that this legislation will be approved by this body and will go to become Federal law.

Mr. Eilberg. I do not believe our colleague, the Honorable Frank E. Denholm, has a prepared statement but I will recognize him briefly at this time.

Did you wish to make a very brief statement, Congressman?

TESTIMONY OF HON. FRANK E. DENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. Denholm. Yes, if I may, Mr. Chairman.

Mr. Chairman, and members of the committee, I am a cosponsor of the legislation before you today.

Mr. Eilberg. Which legislation? We are covering two subjects today.

Mr. Denholm. Yes, both of the proposals.

Mr. Eilberg. On both?

Mr. Denholm. I am a cosponsor of both.

Mr. Eilberg. The Public Safety Officers' Benefits Act and the bill of rights?

Mr. Denholm. Yes. I concur with my colleagues in support of this legislation for several reasons, but I must explain at the outset that I am a former police officer and a former FBI agent and I will endeavor to be objective in my testimony.

I do know the need for this legislation. I concur with my colleagues in their testimony in support thereof.

Mr. Eilberg. In view of your experience, I want to ask one or two questions of you.

If we pass legislation of the kind contemplated by the various bills, the administration bill, Congressman Rodino's bill, and so forth, with respect to benefits to next of kin, do you think it should be limited to benefits following death as a result of a criminal act or death resulting in line of duty?

Mr. Denholm. I prefer the broader concept for the reason that the mobility of crime today knows no limit. It does not stop at the city limits; it does not stop at the county line; it does not stop at the State line. I believe this is an honest approach to revenue sharing. There has been much discussion about revenue sharing for the benefit of the people at the local level. A high percentage of police officers live a lifetime of public service without requesting the Federal Government for one cent. It has been reported that 110 or 111 police officers were killed last year. That is a small percentage of the total number of police officers. However, it is ample evidence of the hazard and the mobility of crime across the country. Crime occurs most often in the dark. Crime transgresses State lines, county lines, city lines.

Mr. Eilberg. If I may interrupt, I am asking whether there should be coverage in the line of duty, even though a criminal act may not have occurred? What is your reaction?

Mr. Denholm. Protection should be extended to officers in the line of duty. The concept of "in-line-of-duty" must be carefully defined but the protection should extend to those officers in the line of duty.

Mr. Eilberg. One other question: From the point of view of the possible law enforcement recruit, whether policeman or fireman, and as a former FBI agent and police officer, to what extent do you think these additional benefits, fringe benefits would be an item of consideration by the fellow or the woman who might be entering and also possibly to the members of his family? As we know, the decision to go into an occupation is very often a family decision rather than perhaps the recruit individually. What effect do you think this legislation would have on the individual if it were to be adopted?

Mr. Denholm. An officer is subconsciously always concerned about security for himself and security for his loved ones—security for his family. I was trained that the other fellow always had the first opportunity for the deadly move and from then on fair play prevailed. Every police officer has a constant concern for security—that concern is not easily explained. He may be on duty for days or months or years, and never be endangered, but he never knows when he is about to be shot. The protection and security as proposed in the legislation before you would be an incentive to every officer to discharge the essential duties of his office imposed upon him by law with a conscious sense of security in the line of duty. So, I think it is a very material part of his performance in the public interest.

Mr. Eilberg. Thank you, Mr. Denholm.

Are there questions from any other members of the subcommittee? Mr. Wiggins?

Mr. Wiggins. Thank you, Mr. Chairman.

I would like to call on your experience as an FBI officer. What are the death benefits payable to FBI officers?

Mr. Denholm. I resigned from the Bureau in Los Angeles in 1961 and, at that time, it was $10,000, but I think it has been increased substantially since then.

Mr. Wiggins. Is it in the form of a gratuity?

Mr. Denholm. No.

Mr. Wiggins. Do you pay premiums for it?

Mr. Denholm. Yes.

Mr. Wiggins. It is an insurance policy?

Mr. Denholm. Yes.

Mr. Wiggins. Is it a lump sum payment?

Mr. Denholm. Yes. It is term insurance. However, it seems to me optional plans are also available but I cannot be certain as to the benefits thereof.

Mr. Wiggins. Does the Federal Government contribute to the cost of that insurance?

Mr. Denholm. I am sure the Government did contribute to the cost of the protection extended.

Mr. Wiggins. In the State of South Dakota, are death benefits in the form of gratuities or otherwise commonly payable to State and local police officers?

Mr. Denholm. Not as a matter of public policy or law.

Mr. Wiggins. That is all the questions I have.

Mr. Railsback. Could I just ask one?

Mr. Eilberg. Mr. Railsback?

Mr. Railsback. I want to congratulate you on your statement, and I want to ask, in your experience with other law enforcement officers, did you find much moonlighting? In other words, police, State, or local, particularly police officers that had more than one job?

Mr. Denholm. Yes, indeed. I think it is common knowledge that police officers are underpaid, particularly at the State and local level.

I found State and local officers to be willing to cooperate with Federal officers at all times from here to San Francisco and across the country. There was an excellent relationship between the FBI and State and local officers, and many times the policemen would volunteer services, the highway patrolmen would volunteer services with us on Federal investigations. The local officers are interested in stopping a Federal fugitive as much so as a State or local man. That is what you should consider and recognize in your deliberations on this proposed legislation. Crime knows no limits of geographical areas. Crime is a national problem in this country.

Mr. RAILSBACK. Was it also true, and is it still true, that in South Dakota, which you are familiar with, the benefits derived by a police officer working in a small community might be very much different than a police officer working for a large municipal department or is it true that there is not much uniformity as far as benefits for local police officers are concerned.

Mr. DENHOLM. Yes, that is exactly true. In fact, the night policeman might be the same person that works for the street department during the day. His benefits, income and security are proportionately smaller than an officer of a large metropolitan area that does have something equivalent to a civil service system with retirement benefits. Nonetheless, the officer in a small community is exposed to the same dangers. If the Federal fugitive or criminal flees through a small town at night and decides to "knock off" a local drugstore for drugs, or to case the bank or commit homicide the person in his path may be killed in South Dakota as quickly as an officer in Manhattan, N.Y. Crime is the same no matter where it occurs. The mobility of crime and the criminal is the problem of us all.

Mr. RAILSBACK. That is all.

Mr. WIGGINS. Would you yield just for a second?

Mr. RAILSBACK. I am sorry. I want to yield to my colleague from California.

Mr. WIGGINS. Just one question.

I wanted to explore further your use of the revenue-sharing concept as a justification for a program such as this. It is my understanding, and I think generally understood, that the purpose of revenue sharing is to provide funds to units of local government so that they may determine their own priorities and take care of their needs accordingly. It is to be distinguished from categorical aid programs where the Federal Government determines the priority and pours money into a specific program. Is it your belief that if units of local government were given a sum of money equivalent to the total cost of this program, that they would select as their priority the placing that money into death benefits for police officers?

Mr. DENHOLM. No.

Mr. WIGGINS. I do not think so either.

Mr. DENHOLM. I think history is evidence to the contrary. Local officials of a majority of the local governing units often seek to employ officers of the law at the lowest salary level possible to keep the peace and quiet of their respective communities.

Mr. WIGGINS. I totally agree with that. I would think that this program is exactly the antithesis of a revenue-sharing concept. It is a classic example of a categorical aid program, which directs Federal money into a specific activity.

Mr. DENHOLM. I am simply saying that these proposals underwrite the hazard but do not necessarily expend money. If we had this program, Mr. Wiggins, it would be a sense of security to those in hazardous duty without an annual capital outlay on the part of the Federal Government.

Mr. Eilberg. Any other questions?

Ms. Holtzman. Mr. Chairman?

Mr. Eilberg. Ms. Holtzman?

Ms. Holtzman. Thank you. I gather from your testimony that if this matter were left up to the States, as it is now, that they would not consider this a high priority, is that correct?

Mr. Denholm. That has been the practice in the past. Therefore, this legislation has been introduced for your consideration. There is much evidence indicating that hamlets and towns and villages and small cities across the country have not placed a high priority on law enforcement until after a crime occurs. And for a while there will follow an infamous crime, a barrage of newspaper articles and headlines and then—forgotten. It has been my experience in being a State and local officer, and in being a Federal officer that public concern is much the same all across the country.

Ms. Holtzman. What would you say are the main reasons for the need for this legislation on a Federal basis?

Mr. Denholm. Well, first of all, the police officer is generally regarded with a similarity of a dog. I say that having been a police officer for many years of my adult life. He is man's best friend, he is seldom wanted unless he is called and when he is called he is supposed to be there at once and without cause for delay. Now, you can have peace and quiet in your community for days and nights and years. But, let some small child be molested or hurt or injured, or a bad accident or a crime occur and all of a sudden the police officer is the focal point of public concern and criticism. He may be the only one there, and like I said, in a small town he may by day be working with the street department and by night he is the police officer, It is a budgetary problem in small towns and this is one area that budget priorities erode until crime occurs.

Ms. Holtzman. Well, would you say that the need for such death benefits would be greater in rural areas of this country than in urban areas?

Mr. Denholm. I do not think it would make any difference for the reasons that I have previously stated, and that is, that if you are dead it makes no difference whether you are a police officer in Manhattan or in a small town in South Dakota. If you have been shot, you are shot. and the mobility of crime today is not limited to any geographical area.

Ms. Holtzman. Do you have any information on the average coverage of life insurance policies carried by police officers?

Mr. Denholm. I could not intelligently give you any statistical information except that the officers that I know cannot afford to buy very much. They usually buy the most coverage at the least possible cost.

Ms. Holtzman. But, you would not have any idea what that coverage on an average would be?

Mr. Denholm. No, I cannot answer or respond to that question with statistical data but I have never known a police officer to be over insured.

Ms. Holtzman. Could you think of any other way of encouraging States to show more serious concern for providing death benefits than through an outright grant proposal?

Mr. Denholm. The local and State governments and even the Federal Government have recognized in recent years the importance of law enforcement and personnel performance thereof. It is because of the mobility of crime, particularly, the drug trafficking that is occuring with rapidity in the schools. As law enforcement is improved and increased against crime in industrialized urban centers—the criminal is moving into the rural areas. And, again, crime knows no limitations—the criminal goes where the market is favorable for his expertise, and, of course, we have banks and stores that are robbed in rural areas by the expert criminals that travel from the urban centers to rural and suburban communities and then retreat to the masses of the industrialized urban centers. I think that the bill provides a wonderful opportunity for the cooperative effort of Federal, State and local governments to provide security to the officers of the law and to the dependents thereof. I am hopeful that you will favorably and promptly report the pending legislation accordingly.

Ms. Holtzman. Thank you, Mr. Chairman.

Mr. Eilberg. Thank you very much, Mr. Denholm.

Mr. Denholm. Thank you, Mr. Chairman, and thank you, members of the committee.

Mr. Eilberg. I would like to announce to the members of the subcommittee and to the folks in the room that we will have to adjourn at approximately 12, and very probably we will have testimony beyond 12 o'clock and our present plans are to resume at 2:30 since some of the members have other obligations in the meanwhile. I think that we should immediately go back to the scheduled witnesses as we are not being quite fair to them by recognizing the Members who have not specifically requested time. However, we certainly want to hear from every single Member of Congress who wants to testify.

I would like to recognize now the witness who appears next on the schedule, a member of the Judiciary Committee, a former member of this subcommitte, and a Member who was involved with this committee when the bill passed the House last Congress and we welcome our colleague, Congressman Lawrence Hogan.

TESTIMONY OF HON. LAWRENCE J. HOGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Hogan. Thank you, Mr. Chairman.

In the interest of conserving the subcommittees time, I request that my statement be made a part of the record.

Mr. Eilberg. It will be made a part of the record.

[The prepared statement of Hon. Lawrence J. Hogan is at p. 77.]

Mr. Hogan. I will make some brief comments and then be available for any questions the members of the subcommittee might have.

As the chairman observed, this subcommittee approved and the full committee approved similar benefit legislation in the last Congress. Unfortunately, it did not reach enactment into law. I think it is legislation long overdue. I would like to say that I think these two bills, and I am a cosponsor of and enthusiastic endorse both.

Mr. EILBERG. Mr. Hogan, there are really three versions. There is the bill that was identical to the House-passed version, the administration bill and the bill that passed the Senate.

Mr. HOGAN. Mine is the Public Safety Officer's Benefit Act of 1973, H.R. 6449, and the bill of rights——

Mr. EILBERG. Excuse me.

Mr. HOGAN [continuing]. H.R. 4600.

Mr. EILBERG. Thank you.

Mr. HOGAN. I think one is a tangible demonstration of the gratitude that the American public has for police and firemen and the other is more intangible. We all know that some among the news media have been very prone to criticize police and give airing to the wildest kind of charges against police officers, and the police officer has seldom had an opportunity to respond. He has always been assumed guilty until proven otherwise.

So, the bill of rights tries to respond to that problem by giving him certain protections that he does not now have in many areas.

The other bill, the $50,000 benefit legislation is, I think, vitally necessary, not only, as some previous witnesses have indicated, to encourage people to come into police work and fire work, but because it is just. There is some question about the jurisdictional involvement of the Federal Government in this area, but in my own mind, I justify this on the basis that police and firemen are out there, defending the security of the country. This was certainly evident during riots a few years ago in various parts of the country. I think the Federal Government itself had an interest in the work of the police and firemen under those circumstances.

But, I would like to allude to something in connection with Mr. Wiggins' questioning of one of the previous witnesses. All of us recognize that a young man starting out in a career, and we probably were no exceptions ourselves, is not thinking about insurance or retirement or future benefits for his family. That is just not one of his priority items, because he assumes that he is going to live to a ripe old age, and none of us like to think that the contrary might be true.

For the most part, the police officer and fireman is starting out in his career and his average age is younger than in most other occupations. He is not really concerned about one aspect of benefits as much as he is concerned with pay and other provisions. But, I think we have to help to fill that gap, not for his benefit, but for the benefit of the survivors of the police and firemen who die in the line of duty. There have been so many heartrending cases that this subcommittee had brought before it during hearings on this legislation in the last Congress. There is a real gap. There is a real need for this kind of payment because most communities do not have this kind of death benefit for survivors. As a consequence, citizen groups and business and professional men have gotten together in various parts of the country and have solicited funds voluntarily in order to make some kind of a payment to them. I do not think this is right because it is very sporadic; it is very indefinite. I would hope that we would uniformly approve this $50,000 payment.

Mr. EILBERG. Now, which of the possible approaches are you suggesting, Mr. Hogan?

Mr. HOGAN. Now, what is it the Chair is asking?

Mr. EILBERG. Are we speaking of limiting it to death resulting from criminal acts, or are we speaking of line of duty, or what?

Mr. HOGAN. The chairman may recall that my own personal preference is for death in the line of duty. However, I realize that in this kind of legislative arena that compromise is often necessary. I think a police officer who is killed in an automobile accident responding to call during the course of his work, is just as entitled to this benefit. He is just as dead as the police officer who is shot by a criminal in the process of committing a criminal act. So, I would prefer to broaden it to include within the line of duty.

Mr. EILBERG. And what law enforcement officers would you include? Would you include firemen?

Mr. HOGAN. I would include firemen and policemen.

Mr. EILBERG. And how far beyond would you go?

Mr. HOGAN. I am sorry?

Mr. EILBERG. Well, probation officers, prison guards, wardens—you name it?

Mr. HOGAN. I would say you could make a case for the risk involved in these various occupations. But, beginning with the first step, I think we ought to exclude all but the policemen and the firemen at this point.

Mr. EILBERG. Do you believe that volunteer policemen or firemen should be included?

Mr. HOGAN. Yes, I do.

Mr. EILBERG. Do you feel that there is any danger that this is a move in the direction of a national police force?

Mr. HOGAN. No, I do not think so, Mr. Chairman, because it in no way involves the Federal Government in the administration of the local police department. This is a benefit to the individual officer and not to the department and in no way gets involved in the operation of the local department.

Mr. EILBERG. So you would not include a volunteer law enforcement officer, is that correct?

Mr. HOGAN. Yes, I would.

Mr. EILBERG. Oh, you would?

Mr. HOGAN. And volunteer firemen.

Mr. EILBERG. Right. Then one other question and then I will yield to my colleagues.

Mr. Wiggins raised the interesting question of what benefits an FBI officer receives or I mean what his next of kin receives, as a result of his death. Do you happen to know?

Mr. HOGAN. My recollection is not the same as Mr. Denholm's.

Mr. EILBERG. You are a former FBI agent?

Mr. HOGAN. Yes, I am a former FBI agent. At the time I was in the FBI and Mr. Denholm was in, there was a $10,000 death payment, but the premiums, according to my recollection, were paid exclusively by the agent himself, and the Federal Government made no contribution to it. It was a private insurance carrier and it was a very good program. And immediately upon the death of an agent, a $10,000 check was delivered to the widow that very same day.

Mr. EILBERG. Now, I want to ask you this question which was provoked by the questions asked by the subcommittee, which, indeed, is a very alert one, as you know. How do you differentiate between the next of kin of, let us say, a soldier and a policeman? In each case, they are dead and we should be concerned equally. I think we should be concerned with the next-of-kin of the soldier as well as the police officer, yet we have different systems. In view of that, how do you justify your position here?

Mr. Hogan. Well, that is a very probative question, Mr. Chairman, and I, too, would support this kind of a program for the man who dies in military service. But, as I think Mr. Fish observed, there is an insurance program at very low rates that was available to the military and, as I recall, it was $10,000, but $10,000 then was about $50,000 now in real value.

Mr. Eilberg. I would also like to observe that the number of policemen and firemen who die yearly in line of duty are relatively small.

Mr. Hogan. So the cost would not be significant.

Mr. Eilberg. Mr. Keating?

Mr. Keating. Pursuing the line of questioning I started earlier, you indicated that the death benefit for an FBI agent was $10,000. Is it about the same now?

Mr. Hogan. I have no way of knowing, Mr. Keating, but I would stress again that the Federal Government was not involved in this at all. This was——

Mr. Keating. Well, I am going to get to that point.

Mr. Hogan. OK.

Mr. Keating. The serviceman pays for his life insurance and can carry it on later. If the FBI agent does the same thing, would it be of some benefit to the public safety officer, however you define it, to have the same kind of an insurance program? The premium would be low and if all public safety officials in the country were thus united by some Federal program they would have something tangible should they drop out of their public safety work as you did out of the FBI, and so on. Does that have any value?

Mr. Hogan. I think that idea has a great deal of merit, Mr. Keating, and, incidentally, I do carry on that insurance even now.

Mr. Keating. And I have my service life, and I suspect many others do.

Mr. Hogan. Most do, and that may be an approach assuming that the legislation before us is found to be wanting, which I hope it is not. I would say that that is an alternative that I would hope the subcommittee would explore.

Mr. Keating. Well, I think in looking at this particular bill, we have to look at the whole picture and that is the reason for my questions into these different areas. I do not think we can say, we are going to look at law enforcement and not look at the total picture of the serviceman, the FBI agent, the Secret Service, the fireman, and the police officers. I think, if we are going to open it up and look at it, we ought to look at what needs to be done to provide a realistic program and one that is effective.

There is the possibility also of having matching funds with local, State governments on death benefits. Have you any reaction to that?

Mr. Hogan. Well, as Mr. Denholm indicated, some of your very small departments in some of your very small communities would find it very difficult. We are, when we speak of police departments, we have a tendency to think about the big metropolitan areas that we see featured on television. But, there are many one- two- and three-man departments throughout the country in small communities, and they do not get very much pay and the community cannot really withstand a big budget. And I do not know whether local communities would be capable of doing it. If you put it on a State basis, then possibly it would be feasible.

Mr. KEATING. I would think much the same as LEAA and other programs that are State oriented. Certainly this would have to be State oriented as well.

Mr. HOGAN. Then it would be probably feasible.

Mr. KEATING. I mentioned earlier, when we talked about the safety of the police officer, that there were two prison guards killed in my State yesterday in an adjacent district. I am wondering about your attitude on the death penalty and if that might have some effect upon the safety of the law enforcement personnel?

Mr. HOGAN. I am also a cosponsor of legislation to restore the death penalty for specific crimes and I regret the Supreme Court decision which made it virtually impossible to apply it any more in any crime.

Mr. KEATING. I am sure you are familiar with the volunteer fire department and police arm. Congressman Railsback raises the question of second jobs. Now, I know that many police officers are forced to supplement their wages by getting a second job. But, I think there may be some inequity between a police officer and fireman, depending upon his hours. Police often work the 8 on and 8 off, or the 10 on and 10 off shifts. The fireman sometimes works 1 day on and then 2 nights, and then has 3 days off. His ability to earn wages on a more regular basis is better than the police officer's, I suspect. That has been my experience and I would like to have the benefit of yours.

Mr. HOGAN. I really do not have any knowledge in that area, Mr. Keating. I think it is a shame that policemen and firemen have found it necessary to moonlight. It is more or less a common practice. Frequently, the moonlighting is a job related to their full-time activity whether it be part-time police work at the stadium or something to that effect. I really have no knowledge in response to your question on that point.

Mr. KEATING. Mr. Chairman, I yield back any time that I may have.

Mr. EILBERG. I will simply ask if any members of the subcommittee have any questions rather than call upon individual members.

Mr. Wiggins?

Mr. WIGGINS. Yes. Thank you, Mr. Chairman.

Your testimony was directed to a bill which you cosponsored, Mr. Hogan, rather than the bill sponsored by our committee chairman, Mr. Rodino. There are several differences in that bill. You made mention of one of those differences in your prepared testimony; namely, the provision for interim payments of up to $3,000 in your bill. That is not in Chairman Rodino's bill. Would you explain the rationale for inclusion of that benefit in your bill?

Mr. HOGAN. Whenever it could be shown that the death, that the public safety officer's death, is one for which a benefit should be paid, the survivor would get $3,000, a payment not to exceed $3,000, to help the widow over that rough time just after the death. Anyone who has been involved with a relative or friend who dies, knows that there is frequently a cash shortage at the time of death. Funds might be tied up awaiting legal determination before they can be released to the heirs. This provision is just a way to make a payment promptly to take care of the expenses that are incidental to the death, funeral expenses and so forth. It in no way adds to the payment. It would be a payment to try to help her over this rough time while the administrative work goes on to determine whether or not the $50,000 payment will be made.

Mr. Wiggins. One of the problems in the bill which we passed last year, and which is now before us as H.R. 12, is that benefits are dependent upon a death of a covered officer as the direct and proximate result of personal injury sustained. I am a bit concerned about the use of that word "personal injury" and what it means. I know you to be a skilled attorney. Can you give some guidance to the subcommittee as to what would be a fair interpretation of the words "personal injury?" Would it be limited to a physical injury in which trauma results?

Mr. Hogan. This was a problem which was debated very strenuously in the last Congress in this subcommittee and it was my feeling that we ought not to limit it, but we ought to broaden it. For example, I do not like the language "injury." I would prefer to see language written in such a way that it would include cases where it would cover a death related to duty. For example, if a man has a heart attack during a very tense situation and the death can be directly attributed to the incident, or, for example, he is overcome with tear gas and, as a consequence, dies, his death should be covered. I would assume this latter might be included under "injury," but I would rather see it interpreted broadly and defined broadly rather than to limit it to one incident.

Mr. Eilberg. Mr. Wiggins, would the gentleman yield on that point?

Mr. Wiggins. Of course.

Mr. Eilberg. Did we not agree in our deliberations, Mr. Hogan, that that would ultimately be left to the LEAA and, in turn, the LEAA would depend upon the local municipality or State to determine that?

Mr. Hogan. To investigate and determine, I believe that was what the compromise was based on.

Mr. Wiggins. Well, of course, the Law Enforcement Assistance Administration and the courts are going to be guided primarily by the language of the statute. Flexibility is tolerable only within a fair construction of the words of the statute. Let us take the case of a police officer who dies as the result of a heart attack as he is about to arrest a suspect. Do you believe that such a death fairly construed would be as the direct and proximate result of a personal injury?

Mr. Hogan. I think it would depend on the circumstances, Mr. Wiggins. If a man had a history of a heart condition, if he was known to be in poor health over a period of time, because of this malady, I think you could make a good case for denying him the benefit. But, if he had no such history and the stress of the situation triggered the heart attack, I would say, yes, it should be included.

Mr. Wiggins. Well, I think we would agree that we are introducing some ambiguity into the statutes by the inclusion of the words "personal injury" leaving open to question marginal situations such as I have just described.

Mr. Eilberg. Would the gentleman yield again?

Mr. Wiggins. Of course.

Mr. Eilberg. Correct me if I am wrong, but I understand that in the debate the line of duty was broadened for inclusion. Therefore, in the hypothetical case mentioned regardless of the prior condition or health of the police officer who dies of a heart attack, it seems to me that if he is in the line of duty that his next of kin would be covered?

Mr. Hogan. Yes; that is correct. But, he is addressing his question to the Rodino bill rather than the one I cosponsored.

Mr. Wiggins. Yes.

Mr. Eilberg. Excuse me.

Mr. Wiggins. As an alternative to the Rodino language, in your bill, Congressman Hogan, you say that the death must be the proximate result of a criminal act, or an apparent criminal act. That is your substitution of words. Now, going back to my hypothetical illustration of the officer who dies as a result of a heart attack as he is about to arrest a suspect, would there be any question in your mind that the death would be covered if we use the language of your bill?

Mr. Hogan. There would be no question. There would be no question in my mind that it would be included. It is my intention that it would be included.

Mr. Wiggins. Right. In other words, the language you use would remove this ambiguity that is inherent in the Rodino language.

Mr. Hogan. I agree.

Mr. Wiggins. Now, as you know, this Congress passed a bill several years ago which extended Federal compensation to local police officers who were performing a Federal function. Now, under that Federal law, it is possible for the survivors of a local police officer who at the time of his death was enforcing a Federal statute, to receive up to 75 percent of his normal compensation. Your bill provides that any lump sum death benefit payable under your bill would be reduced by this Federal compensation. You are nodding, and for the record, indicating agreement. That is my reading of your bill, as well.

Mr. Hogan. Yes.

Mr. Wiggins. Under the Rodino bill, however, no such reduction is considered. Therefore, if we have a police officer in the State of Maryland who is apprehending a suspect who has violated a Federal statute in the District of Columbia, under present law the Maryland officer would be covered by the Federal compensation. If the Rodino bill is passed, however, that officer would get an additional $50,000. Now, is that not a fortuitous circumstance that tends to reward the survivors of a local officer who happened just coincidentally to be engaged in the enforcement of a Federal statute and discriminate against a Maryland police officer who was performing his normal functions?

Mr. Hogan. In a sense, I think it does, Mr. Wiggins, but I assume that the rationale behind the prior legislation which you alluded to was to somehow find an excuse to involve the Federal Government in what is essentially a local matter.

Mr. Wiggins. I do not agree with that rationale.

Mr. Hogan. Assuming it is an investigation of a Federal crime, the idea is that he is acting in a Federal capacity and, therefore, it is a legitimate area of Federal jurisdiction. Actually, in the drafting of the legislation, my recollection is that we did not have in contemplation the Federal statute to which you alluded, but we were trying to cover those situations where the individual got no lump sum benefit locally. Some States do give them, some States do not, and we were trying, if my recollection is correct, to find some uniformity where it would be reduced by that amount. I do not think that prior statute ever came up in any of our deliberations.

Mr. WIGGINS. Well, let us look at it as an original proposition in terms of what is fair. Do you believe that it would be appropriate in the few cases in which a State or local police officer is covered by Federal employee compensation to have any lump sum death benefits reduced by the amount of compensation?

Mr. HOGAN. I have not given any thought to it because this is the first time I have heard of it.

Mr. WIGGINS. You have included it in your bill.

Mr. HOGAN. But I have not thought about it in the context with this other Federal law that you alluded to, because, as I say, that was not even considered when this was drafted. But it would seem to me that it would be inequitable. If the object is to give a survivor benefit to all police officers, we ought to treat them equally.

Mr. WIGGINS. The basic rationale of extending coverage to line-of-duty deaths as distinguished from death resulting from a criminal act, was expressed by you and by Congressman Denholm in terms of the officer being just as dead, his survivors have just as many problems, in one case as in the other. And I understand that argument, but does not the logic of that argument take us to including all officers whether they are in the line-of-duty or not, indeed all employees if we look to the problem of survivors only, because the cause of death is really irrelevant? A survivor's problems are special problems occasioned by the death of a breadwinner and does not the reality of that indicate that we ought to give consideration to providing benefits to survivors without reference to the employment of the breadwinner?

Mr. HOGAN. Well, we get into a cost factor, obviously, in that case, But, the object of this is to give a special reward to the individual who assumes an extraordinary risk in the performance of his duty. Now, I would say that a police officer who works in the radio room inside headquarters all of the time. and he never leaves the building, ought not to be included under this legislation because he is not assuming the same risk, unless, of course, he is required to answer calls under some circumstances and so forth. To illustrate the kind of situation that I am referring to, and I believe, Mr. Denholm refers to, let us take a hypothetical case. Suppose a police officer is responding to a call and he is racing to the scene with his red light and his siren on and he is killed in an accident. There was no crime committed. Let us even assume that it was a false alarm, a false call. Under those circumstances, I would envisage that his death ought to be covered. But, a man who works inside all of the time, and he is not exposed to danger, I would say should not be covered.

Mr. WIGGINS. Well, now, that rationale could be characterized as a "hazardous duty" pay provision. Now, if the rationale, the fundamental rationale for this legislation, is to compensate officers who are engaged in hazardous duties. is not the problem of the survivors irrelevant?

Mr. HOGAN. Not to me. You see, I see it as a problem of the survivors because their breadwinner assumes this extraordinary risk and they may be denied the livelihood that he provides or would continue to provide if he were a door-to-door salesman not exposed to danger. You see it as a means of compensation to reward him for assuming the risk, and to lure him into police work. I do not see it that way. I see it as a mechanism for correcting an inequity with respect to the widow who loses her breadwinner and has nowhere to turn. As a consequence, many communities have started volunteer charity fundraising drives to try to solve this problem. I say that we ought not to rely on charity; we ought to take care of it as a public problem. That's what my bill does.

Mr. WIGGINS. Well, as explained by you, I think you have somewhat turned away from your hazardous duty concept, and you say now that this is a program to compensate survivors who are in need. The purpose of these questions is to focus upon what the true rationale is, because the two suggested by you are not necessarily consistent.

Mr. HOGAN. You see, what I am saying is that every day the policeman and fireman goes out to work, his wife becomes a potential widow. He is a young man, 22 years old, and he goes out there and he is engaged in a dangerous occupation. He might not get home that night. So, my concern is with the home situation, because the breadwinner of that family is involved in dangerous activity. The policemen and firemen and his family are assuming a risk and, very frequently, are denied the ability to support the family, and often you have young children involved, and so forth. So, my approach is to the survivors because of the hazardous duty. If he were going there every day to work as a file clerk at the police department, I am not concerned about the survivors because they are going to have the benefit of his earning capacity throughout his normal life.

Mr. WIGGINS. All right. I think I understand.

I have one further item before I yield my time. Let us suppose, hypothetically, that the survivors are not in need. We have always assumed that they are.

Mr. EILBERG. Mr. Wiggins, could I just interrupt for one second? I would like to follow up on your last point of hazardous duty.

Mr. WIGGINS. Of course.

Mr. EILBERG. Just so we have a more complete record on that point, alone.

You explored at some length the concept or your concern for hazardous duty. However, what about the officer who is a clerk in a police station and someone is arrested and conceals a dangerous weapon in a prison cell. I mean certainly you would not exclude coverage to the next of kin in that case and yet he is not engaged in a per se hazardous duty.

Mr. HOGAN. I think you have to have some limits, Mr. Chairman. If you broaden it to that extent, you would have to include the elevator operator, and the char force and everyone else who might be injured if a police department is bombed, for example, I think we have to have some limits on the legislation and I think the hazardous duty is a reasonable limitation.

Mr. EILBERG. Excuse me, Mr. Wiggins.

Mr. WIGGINS. Thank you. I want to explore the problem or perhaps the rare case where the survivors are not, in fact, in need. We have assumed that they would be. Let's suppose, for example, that the widow remarries one week after the death of her husband. Does that fact alter your view about the wisdom of the lump sum gratuity in any way?

Mr. HOGAN. No, I do not think that we ought to assume that she would. That would probably be a rare, hypothetical situation and we ought not to deny the benefit to those overwhelming number of worthy cases. Perhaps that might happen. In fact, there might be someone who would marry her because of the $50,000 payment. But, I do not think that we ought to deny, that we ought to refuse, to correct an inequity because what might possibly happen as a result of the solution.

Mr. WIGGINS. Well, the circumstances may be not so rare as you might think. I notice that in drafting our Federal compensation program, that benefits payable to a widow cease upon her remarriage, so we have contemplated the situation in prior legislation. Similarly, we have provided in the same legislation that benefits payable to minor children ceased upon their attaining the age of 18 years.

Mr. HOGAN. Could I comment on that?

Mr. WIGGINS. Yes.

Mr. HOGAN. There was also a provision in the Federal retirement law and, as a result, we had several octogenarians living in sin rather than getting married, so we changed the law.

Mr. WIGGINS. Of course, I have seen that happen. Not often with octogenarians, however.

Mr. HOGAN. Well, the air is better in Maryland.

Mr. WIGGINS. Now, one potential vice in a lump sum gratuity is that it will be spent improvidently and quickly. We have all had some personal experience in that. Anyone who has practiced law has seen that happen. I have seen a widow who received a substantial insurance check, and after paying attorney fees, spend that money quickly on fur coats and trips to Florida. She came back in a relatively impoverished condition within a month or so. We have to accept that risk here when we provide for lump sum gratiuties, particularly, in the sum of $50,000. Might it be more consistent with the objective of providing for the security of survivors to dole that money out in reasonable monthly installments, leaving the $50,000 sum as the absolute amount but paying it at a rate of $1,000 or $2,000 a month, or some reasonable figure to guard against the improvident expenditure of that money?

Mr. HOGAN. I think that idea has merit, Mr. Wiggins. I would again like to say that there probably would be a minority of widows who would blow the money, especially if there were young children involved. But I would not object to that arrangement which would call for that kind of provision.

Mr. WIGGINS. You have indicated in your last response that the risk of that happening is very remote. But let me say again that the Federal statute contemplated that problem and does pay out in monthly installments benefits rather than a lump sum benefit.

Now, a final problem. If there are minor children under the Rodino bill and the administration bill, the payment is made to the spouse and to the children. If there is more than one child, it is in equal shares to the children. I take it that that would vest a legal interest in the fund in the children, themselves. In most States, that would require some types of guardianship proceeding to administer that fund, and would impose upon the guardian, most likely the widow, the duty of annual accounting, perhaps to a probate court or some similar court, with respect to the expenditure, investment, and the use of that fund. That is an obligation which is implicit in the legislation before us, and it is no small obligation, incidentally, on the basis of my experience. It is a major obligation when we are dealing with relatively small amounts. Could we avoid that problem, if money were paid out in monthly installments?

Mr. Hogan. I think that would solve the problem assuming that you could arrive at some kind of an equitable formula that would take into consideration the need of the family.

Mr. Railsback. Would you yield?

Mr. Wiggins. Of course.

Mr. Railsback. I question that. I think that if you have minor children involved, you are going to have to set up some kind of a guardianship. But, as I see it, it would not make any difference whether the money was paid over in a lump-sum benefit with the guardian accountable for administering one-half of it. You are still going to have an annual accounting for it, whether it is paid out monthly or any other way. There is going to have to be an accounting of how the money is spent, not just how it is received.

Furthermore, I think that we are almost insulting, in the absence of some kind of a finding of incompetence, the widow who wants to receive the total sum, by denying her the right to ask for the total amount. In many Workmen's Compensation statutes, there is an option. You can either receive it in monthly benefits or you can ask for it to be received in a lump sum. I would hate to see a provision where police widows have to receive the money over a period of time when they may need it immediately.

My remarks are not a question.

Mr. Wiggins. Well, I appreciate the gentleman's observations and I share many of those views. I can only say in partial response that we have accepted the risk of insulting all of the Federal employees' widows because that is the formula written into the law at the present time.

Thank you very much, Mr. Hogan.

Mr. Hogan. Thank you.

Mr. Keating. I just want to make one observation.

I think the question raised by Mr. Wiggins and Mr. Railsback also provides some latitude for the committee in considering what might come out of the bill. But, mostly, I would like to state to the gentleman from Maryland that I deeply respect his views and I think he is very competent in this and many other areas; but especially the law enforcement field. His testimony this morning has been most valuable and certainly most appreciated by myself.

Mr. HOGAN. Thank you, Mr. Keating.

Mr. EILBERG. Thank you, Mr. Hogan.

Mr. HOGAN. Thank you, Mr. Chairman.

[The prepared statement of Hon. Lawrence J. Hogan follows:]

STATEMENT OF HON. LAWRENCE J. HOGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I am grateful for the privilege to testify today before the distinguished Subcommittee on Immigration, Citizenship and International Law regarding two bills that are of vital importance to the law enforcement officers of America.

The two bills, the "Public Safety Officers' Benefits Act of 1973," H.R. 6449, and the so-called "Law Enforcement Officers' Bill of Rights," H.R. 4600, both address themselves to very real needs that exist in the law enforcement profession and are both designed to make a career in law enforcement more appealing. I am happy to be a co-sponsor of both bills.

Let me first discuss the "Public Safety Officers' Benefits Act." This bill would amend the Crime Control and Safe Streets Act of 1968 to provide benefits to survivors of police officers killed in the line of duty.

In today's rebellious atmosphere, policemen must not only cope with an alarming crime problem, but they are also forced to defend their very lives. There is seldom a week that goes by without a report from one of the major cities of our Nation about the slaying of a police officer.

This bill would give to the spouse and dependents of a public safety officer killed in the line of duty a payment of $50,000.

This bill also has an important provision providing for an interim benefit payment. Whenever it is determined that, upon a showing of need and prior to taking final action, that the death of a public safety officer is one to which a benefit will probably be paid, the Administration could make an interim benefit payment not exceeding $3,000 to the person or persons entitled to receive a benefit under this bill.

In the 91st Congress legislation was passed providing a similar benefit for the dependents of D.C. police officers killed in the line of duty. During the 92nd Congress I also sponsored legislation to provide a death benefit to public safety officers.

Because of the disparity in survivor's benefits throughout the fifty States, I think it is fitting that the Federal Government provide this payment to the families of public safety officers, both policemen and firemen, who have made the supreme sacrifice for their fellow men. This stipend would serve as a federal floor for survivor's benefits and would be in addition to any other benefits due the family, but could be reduced under certain conditions specified in the bill. Because the security of the United States is involved in attacks on police officers, I think there is ample justification for federal legislation in this area.

The law enforcement officer today bears a heavier burden, faces more frustrations, and is second-guessed more than ever before. The public asks more and expects more of the present-day policeman because the public need for protection is greater. When a policeman is assaulted or slain, the criminal significance of the incident extends far beyond the victim officer. It extends to the door of every law-abiding citizen and to the very security of the United States.

Man cannot live in this complex society of ours without a system of laws, and this system is doomed to destruction unless these laws are enfoced. The enforcement officer is rendered totally ineffective unless his efforts to maintain peace and protect life and property are supported by the government and the people.

The price of enforcing the law is costly. No one knows just how costly except the slain policeman's family.

Enactment of both the Benefits bill and the "Bill of Rights" will indicate to these families and officers that most Americans do care and that, as a society, we are grateful that there are men and women who will take the ultimate risk, who do recognize the high glory that is attached to service in the law enforcement community.

Now let me turn to the "Law Enforcement Officers' Bill of Rights." This bill would provide a system for handling complaints and grievances submitted by law enforcement officers as well as statutory protection for their constitutional rights and privileges.

The courts are being ever more generous and meticulous in granting to accused criminals every right, protection, safeguard and benefit that can possibly be imagined, until it is virtually impossible to arrest, try, convict and incarcerate the burglars, muggers, rapists and murderers roaming our streets. At the same time that our courts have hamstrung our law enforcement officers with reel upon reel of red tape, we seem to be focusing much of our frustrations and resentments on our police. They find themselves targets for every conceivable kind of abuse, physical as well as verbal, and yet, in most cases, they have been denied any protection or recourse. Surely our police are entitled to the basic rights and protections supposedly due every citizen of this nation under our Constitution. Otherwise respect for the law and the officers charged with enforcing it will continue to deteriorate until we are living in a jungle of unchecked predators.

The "Bill of Rights" includes the right of law enforcement officers to engage in political activity while off duty; safeguards while they are under investigation; police representation on complaint review boards; the right to bring civil suit for damages arising out of official duties; protection of the privacy of their personal finances unless conflict of interest is indicated or for tax collecting purposes; prior notification and the reason for punitive personnel actions; and protection from any action against a law enforcement officer for exercising his rights.

This bill also proposes that a Law Enforcement Officers' Grievance Commission be established in each state or local government, composed of representatives from the police, government and the public, to receive, investigate and make determinations on complaints and grievances submitted by police officers arising out of claimed infringement of rights.

It is astonishing to me that we can continue to treat our law enforcement officers as second-class citizens. On the one hand, we rightfully expect an extremely high level of performance from our policemen, but on the other hand we consistently deny them the basic civil rights we have all presumed to be guaranteed by the Constitution.

Enactment of this legislation will provide our law enforcement officers with protection that they deserve and I think it is high time we gave them the benefit of this protection.

Ever since I came to Congress I have worked for legislation for law enforcement officers. Each and every citizen owes these men a debt of deep gratitude. This Committee can make a significant contribution by acting favorably on both of these proposals.

Mr. Eilberg. I assume the other Members in the room are here just to make a very brief oral statement, and I would like to introduce for that purpose the chairman of the Veterans' Affairs Committee, Congressman William J. B. Dorn, of South Carolina.

TESTIMONY OF HON. WILLIAM JENNINGS BRYAN DORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. Dorn. Mr. Chairman, I just wish to thank you and this great subcommittee for considering this proposition.

Mr. Eilberg. Which one are you now referring to?

Mr. Dorn. On the benefits to widows of policemen, law enforcement officers killed in the line of duty. And I assume this is what you gentlemen are considering.

Mr. Eilberg. We are also considering the bill of rights legislation.

Mr. Dorn. I want to appear in favor of the legislation to grant some form of gratuity to the widows of law enforcement officers killed in the line of duty. And my reason for advocating this legislation, commending the committee for considering it, is that these men and women are, all of them, are actually engaged in apprehending many criminals in interstate flight. They are called upon constantly by the FBI and other agencies of the Federal Government, the Postal Service, to help them apprehend criminals in interstate flight, bank robbers, and we have had a considerable number in our area. And, of course, they are the first line of defense of the country, really, against anarchy and subversion and fascism, and so on, in the streets and byways of our country. So, I think it is very proper and I would urge the committee to consider making the death benefits retroactive to the first of this year.

We have had two law officers killed in the last few weeks, one in my hometown who was enrolled in school under the Federal Law Enforcement Assistance Act, going to school to learn better ways of law enforcement. And he was killed in the line of duty. We had another one the day before he might have retired in Camden, S.C., the town of our distinguished Governor, so it would be tremendously encouraging to law enforcement throughout the country and lend a certain amount of prestige to their endeavors.

And that is all, Mr. Chairman.

Mr. EILBERG. Mr. Dorn, it is after 12 and it is unfortunate that sometimes we have to rush, but I wish you had been here before.

Do you have a statement?

Mr. DORN. Yes.

Mr. EILBERG. We would like to make that a part of the record.

[The prepared statement of Mr. Dorn follows:]

STATEMENT OF HON. WILLIAM JENNINGS BRYAN DORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman, our law enforcement officials—firemen, police, sheriffs and deputies, patrolmen and state law enforcement officials daily risk their lives to protect the lives and property of others. They are the Nation's front line defense against anarchy and chaos. Yes, Mr. Chairman, they are actively engaged in preserving the Republic against subversive activity and criminal disruption.

We have introduced legislation, under consideration today, to provide a $50,000 gratuity to the survivors of law officers killed in line of duty. The benefits would be shared by the officer's wife and dependent children. We are encouraged by these hearings, and urge this Committee's favorable consideration.

Furthermore, Mr. Chairman, we urge your Committee to approve a bill that is retroactive in its benefits back to January 3, 1973, the first day of this 93rd Congress.

Mr. Chairman, we have received tremendous support for this legislation. The people of South Carolina and the entire Nation are sickened by the growing toll of firemen and law officers killed in duty. Only weeks ago Deputy Sheriff Pat Orr of Camden was brutally murdered, one day before he could have retired from the Kershaw County Sheriff's Department. Recently in Greenwood, our friend and neighbor, Sheriff's Deputy Charles A. Rogers was killed in line of duty and he leaves a young family. Mr. Chairman, I urge quick approval of our bill to provide $50,000 gratuity to the survivors of law officers and firemen killed in line of duty.

Mr. Chairman, I might add that Deputy Rogers was enrolled in school under the National Law Enforcement Assistance Act. Furthermore these "local" law enforcement officers are constantly engaged in working with F.B.I. and other Federal agencies to apprehend bank robbers and criminals in interstate flight.

Mr. EILBERG. We wish we had the time now to explore with you some of the differences that we are contemplating here for the next of kin of law enforcement officers as compared with benefits to next of kin of G.I.'s on active duty or in the Reserves. And there are a great many questions in that area and I am wondering——

Mr. Dorn. Well, I realize that that poses a problem for the committee, but I am sure that the distinguished counsel and the attorneys on the committee can work that out.

Mr. Eilberg. May I ask, sir, if you would possibly consider having someone on your staff look over the testimony offered here and give us some of your thinking.

Mr. Dorn. It would be a real pleasure to do so and I will be glad to do that. I want to thank the committee again, but I did feel very strongly about this and I wanted to make a personal appearance.

Mr. Eilberg. Thank you very much.

Mr. Dorn. Thank you, Mr. Chairman.

Mr. Eilberg. We also have present Congressman Matthew Rinaldo of New Jersey. Would he come forward for a brief statement? I think he is still here. He is not here.

Mr. Railsback. You have Congressman Hunt.

Mr. Eilberg. And, of course, my good friend and neighbor, who sometimes thinks that I do not know that Camden, N.J., is on the map, but I do, John. Our good friend and former police officer in his own right.

Could you stand up and give us a brief statement, John, of your position.

Mr. Hunt. I appreciate that but I do not care to make a brief statement. I have been sitting here listening to the questions promulgated——

Mr. Eilberg. Well, you are welcome to come back.

Mr. Hunt. Yes, I will come back. I think perhaps that I am a senior member of the law enforcement group in this Congress. I have roughly around 33 years of experience in all fields, including the administration of a prison for 4 years and I am very much interested in some of the questions promulgated by the worthy counsel here today and not being a member of the bar association. I have other things to say.

Mr. Eilberg. I do not mean to belittle your experience.

Mr. Hunt. Yes. I could not possibly walk out of here without saying a few things that I would like to say on behalf of police officers, and I know that there are many questions that this group will promulgate and I listened very intently to Mr. Wiggins' examination. And, of course, he is one of the men I consider in Congress to be quite knowledgeable in the enforcement field. He has to be quite knowledgeable in that field, because he has followed it rather astutely, and I would rather come back at some other time when you have more time. We might get into this matter then. I am just a firm believer that many times in the past, law enforcement officers have been treated as second-class citizens, and to that I object most strenuously.

Mr. Eilberg. You are invited back at 2:30 or any subsequent time.

Mr. Hunt. Thank you. I will return.

Mr. Eilberg. Thank you.

Mr. Keating. May I suggest, Mr. Chairman, recognizing the press of time as well, if Congressman Biaggi is going to be here right at 2:30, maybe we could accommodate him by saying at 3 or 3:15 or 3:30?

Mr. Hunt. I will be happy to come back at whatever time the Congressmen request.

Mr. Eilberg. Well, we have held the Congressman all morning and as he is the prime sponsor of his bill, we will put him on first this afternoon. We do not want to rush him either. We also have Mr. McKevitt coming back, representing the Justice Department and we have yourself, and whoever else might appear. So, I am suggesting that sometime perhaps after 3 o'clock.

Mr. Hunt. Whatever time the committee has available, I will be happy to return.

Mr. Keating. I think Congressman Hunt has a great deal to contribute, and I think it would be a real opportunity to have you testify.

Mr. Hunt. Thank you.

Thank you, Mr. Keating.

Mr. Eilberg. Thank you, John.

Mr. Hunt. Thank you, sir.

Mr. Eilberg. The subcommittee stands adjourned until 2:30.

[Whereupon, at 12:14 p.m., the hearing recessed to reconvene at 2:30 p.m., the same day.]

AFTERNOON SESSION

Mr. Eilberg. The subcommittee will be in order.

Congressman Biaggi, in addition to being a close friend of so many of us, is a leading exponent, if not the leading exponent, of the bill of rights legislation. Before and during the debate on LEAA, we indicated a desire to hear from you and this is it and you may go forward in any way you wish.

TESTIMONY OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Biaggi. Thank you, Mr. Chairman, fellow members of the Subcommittee of the Judiciary, for this opportunity to speak to you about my bill of rights. I would observe, it is better to be the leadoff pitcher in the second game than trying to save the first game.

I am also mindful of the fact that you did promise to provide a hearing in connection with this bill, and I am especially grateful to you, Mr. Chairman.

I listened this morning as my colleagues testified in connection with both bills, both concepts, and I would like, for the record, to reaffirm my support of the survivor's bill, death benefits, for police officers and sundry, and I have a statement which I have submitted for the record.

This afternoon I would like to address myself more narrowly to the bill of rights.

This piece of legislation, my law enforcement officers' bill of rights, has been one of my major legislative proposals since coming to Congress. When I was a police officer on the New York City Police Force, I recalled the work of Congress to grant most citizens in America basic civil rights guarantees.

I saw, however, that within the police department, these civil rights were not available to the man who was responsible for enforcement—the policeman himself. I made it my objective to get a bill in Congress that would guarantee these basic rights to law enforcement officers as well. That is what this bill does, it gives to these men the same basic civil rights guaranteed every other American, no more and no less.

Over the years that I have pushed for this bill, many have argued that the bill is unnecessary since these rights are guaranteed by the Constitution and the Civil Rights Act. Yet I would remind my colleagues that the rights in those laws are guaranteed by the Constitution as well, yet a legislative statement of civil rights was found necessary. I say to you, a similar statement of basic rights for policemen is necessary today.

Before I get into a discussion of the basic provisions of the bill and some of the cases that demonstrate the need for the measure. I would like to read to you portions of a bill of rights that was approved by the Federal courts for another group of citizens.

1. Any decision to take disciplinary action against an individual must be made by an impartial tribunal;
2. There must be a hearing, encompassing the right to cross-examine adverse witnesses and present evidence in defense;
3. There must be a written statement of the charges against an individual;
4. Representation by a lay adviser or legal counsel must be permitted; and
5. The right to communicate for the purposes of enlisting an attorney's aid must be guaranteed.

These basic rights, presumably guaranteed by the Constitution and civil rights laws, were enunciated by Judge J. Merhige of the U.S. District Court for the Eastern District of Virginia. His decision was not for policemen, not for the law-abiding; his decision was rendered on behalf of prison inmates. Yes, convicts are now guaranteed basic civil rights, while these same civil rights are denied police officers. A complete copy of his decision is annexed as appendix A. [See p. 106.]

In his decision—and this has great bearing on the need for my bill since the situation in many respects is similar—the Court said that—

> Inactive relief would issue, where evidence adduced in respect to administration of discipline within prisons disclosed a disregard of constitutional guarantees of so grave a nature as to violate the most common notions of due process and humane treatment * * *. It was further held that in order to discipline prisoners confined to state penal institutions, certain due process rights are necessary * * *.

The case I will present here today is that the circumstances which led to that court decision are similar in nature to the circumstances facing police offiers today and as such clearly demonstrate the need for legislative relief.

Briefly, I would like to review my legislation, which is now cosponsored by 130 of my colleagues.

The bill seeks to establish two things: a bill of rights for law enforcement officers and grievance commissions. These items will be required of any State that applies for Federal funds under the Law Enforcement Assistance Act.

Under the bill of rights, the following would be granted:

1. A police officer would be permitted to participate in political activities while off duty.

2. Law enforcement officers under investigation must be notified about the time and place of interrogation, the nature of the complaint against him and the names of the complainants and his legal rights.

3. An officer under intradepartmental investigation should be entitled to legal counsel.

4. Police officers must have equal representation on any complaint review boards.

5. A disclosure of an officer's personal finances shall not be routinely required simply for purposes of assignment or other personnel action. Such information shall be obtained only under proper legal procedures.

6. An officer must be notified and given the reasons for any punitive actions taken against him prior to the effective date of such action.

7. All complaints against law enforcement officers shall be duly sworn to by the complainant.

8. Interrogating sessions shall be for reasonable periods and shall be timed to allow for personal necessities and rest period.

9. During interrogations, no threats of transfer, dismissal or disciplinary action shall be made nor promises of reward offered.

10. The complete interrogation shall be recorded and the record made available.

11. If the officer is placed under arrest or is likely to be placed under arrest, he shall be advised of all his rights.

12. The right of law enforcement officers to bring civil suits against others for damages suffered or for abridgment of their civil rights arising out of the officer's performance of official duties shall be recognized and they shall be given assistance to do so when requested.

13. Law Enforcement Officers Grievance Commissions are provided for in recognition of the fact that the only avenues of redress of civil rights grievances available to the law enforcement officer at the present time are courts or the chain of command of the police unit. These are not always desirable nor satisfactory.

The average citizen is given other opportunities for resolving his grievances without having to go through formal court procedures. We have established, for example, the Equal Employment Opportunities Commission. Many States have Human Rights Commissions. The Grievance Commissions are simply a special body to deal with the unique problems faced by police officers and a recognition of the fact that police officers oftentimes cannot find satisfactory relief from other units set up to adjudicate complaints of denial of rights.

Now I would like to present to the committee some examples of the many cases that have come to my attention over the years.

In one such case, three police officers in Waterbury, Conn., were fired by the police superintendent on charges that they attempted "to cheat and defraud the city of Waterbury" planning a sick-call job action.

Emanuel Carosella, one of the fired officers and president of the police organization, claims he was in the basement of his home sometime after 11 p.m., together with the other two officers when the police superintendent forced his way into the house by breaking a locked door. The police superintendent, says Carosella, then pushed aside Carosella's wife, and after confronting the three officers accused them of planning a job action and suspended them on the spot.

The next day—the day the job action was supposed to occur—Carosella points out that only one man in a 300-man force called in sick. In the ensuing civil service hearing, testimony showed that the superintendent was trespassing and had entered the Carosella home illegally. The men nevertheless were dismissed from the force. The officers have since been seeking redress to no avail. They even tried, in vain, to press charges against the superintendent, but the local prosecutor refused to have the warrants served.

Former police officer Carosella and his two companions are still wondering whether the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" so eloquently put in the fourth amendment of the Constitution of the United States, and so much a part of modern police investigations, applies to police officers as well. They look to my bill for a ray of hope for themselves and the other police officers subjected to the same maltreatment.

In another case, a Los Angeles Police Department "audit" resulted in a petition, filed by four members of the detective division in superior court in 1971, charging that their civil rights were being denied in that they had been "illegally confined and interrogated: from 8:30 a.m. to 5 p.m. daily over a period of days and that their phones were tapped and they had been denied legal counsel.

In New York City, former Police Commissioner Patrick J. Murphy ordered top commanders last August to reveal all their personal finances in a detailed questionnaire, a practice instituted some years earlier for men in the lower ranks. His reasoning—this is the important thing we have to delineate here. If it is a question of corruption or the like, we have no quarrel with that. His reasoning was to "seek information * * * to determine whether a detail * * * should be continued." This sort of activity leaves entirely too much room for personal judgments about a man's morals based solely on the evaluator's interpretation of either the degree of assets the man has accumulated—or failed to accumulate. The provision in my bill limiting such inquiries would guarantee that financial worth will neither restrict nor enhance a man's chances for choice assignments.

The New York City Knapp Commission, a unit created by the Mayor to investigate possible corruption in the city's police department, has also raised certain questions regarding the most effective way to improve police performance. It chose to make public displays of its hearings in which several suspected police officers charged with crimes were used as witnesses against police in general.

After the early hearings, the Commission made the blanket charge that a pervasive climate of corruption among New York City police existed and that rookies who come into the department are faced with the situation where it is easier for them to become corrupt than to remain honest. No doubt the thousands of dedicated rookies and the many others aspiring to become police officers in New York City were duly intimidated by so general an indictment. It is this kind of demoralizing public damnation that I hope to counter with my bill.

Chairman Knapp himself had some misgivings about the technique employed by his Commission, saying:

> In this first set of hearings, there were the obvious dangers of doing unjust damage to police morale and the fact that they might jeopardize civil liberties.

In any event, Chairman Knapp became convinced that, in spite of the spectre of a political circus haunting the hearings, the civil liberties of police were secondary to the main thrust of the commission's work.

That is an important observation. He acknowledged the civil liberties of the police were secondary in this day and age in this country.

The pervasiveness of the sort of treatment I seek to eliminate is demonstrated by two other cases. One, in North Tonawanda, N.Y., involves a police officer who was ordered to appear before the full city council after an argument over police working conditions with one of its members. He was questioned by the council and penalized 7 days' vacation for his failure to apologize to the city councilman. After refusing to accept the council's decision, he was formally charged by the council and then tried—by the same council. Although never informed of the specific charges, he was declared guilty and suspended for 30 days without pay.

The shocked officer recovered enough to file an action in the court of appeals in Rochester, N.Y. The court ordered that the officer should be reinstated with back pay.

The other case occurred in Mount Holly, N.C., in which a police chief was dismissed for conduct unbecoming a police officer allegedly as the result of his efforts to block a plot by a local Ku Klux Klan group to take over the police department. Although the dismissed police chief was cleared of the charges and was later reinstated by a bold city manager, lawsuits were filed and the question of violations of civil rights remained unanswered.

Two court cases have particular significance. They show the temerity with which the judiciary acts to enforce the rights of law enforcement officers.

In a case in California—*Norton* v. *City of Santa Ana*, Cal. Reptr. 37, 1971—a former city police lieutenant who was dismissed for violation of departmental rules and regulations sued for reinstatement but his claim was denied by the court. The court stated his dismissal was based, at least in part, on lawsuits the lieutenant had brought against the police chief for libel and slander.

The court held that the lieutenant's actions constituted a personal vendetta and a direct challenge of the authority of the chief to manage and supervise his department, the effect of which was to create internal dissension on a grand scale if allowed to continue. The court ruled the plaintiff lieutenant was not denied his constitutional right of access to the courts. However, it sounds like we are talking more about keeping the slaves in their place rather than protection of basic civil rights.

In another case—*Grabinger* v. *Conlisk;* USDC Nill, December 19, 1970—two Chicago police officers brought an action under section 1983 of the Civil Rights Act contending that they have a constitutional right to counsel during a polygraph examination and to have an attorney at a hearing before the complaint review panel. The officers were charged with brutality and refused to submit to a polygraph examination unless they could have an attorney present. The officers were suspended for 15 days upon the recommendation of the disciplinary panel of the police department.

The Federal District Court for Northern Illinois noted that a law enforcement officer is in a peculiar and unusual position of public trust and responsibility and because of this the public has an important interest in expecting the officer to give frank and honest replies to questions relevant to his fitness to hold public office.

The court considered the small maximum penalty the panel could recommend—less than 31 days suspension—and found neither a denial of a right to counsel nor a violation of procedural due process. The court recognized—and this is the shocking part—if every officer who appeared before the panel were to invoke the full panoply of judicial process, serious impairment of the disciplinary processes of the Chicago Police Department could occur.

What they are saying, again, is that the police officer is not in the position of a prisoner or an average John Doe Citizen; he is not permitted the full panoply of due process, simply because he is a police officer. In other words, granting of such rights would be impractical to carry out because of institutional and organizational limitations.

Contrast this with the decision of Judge Merhige in defining the rights of convicts. Bear in mind that intraprison discipline is on much the same order as intradepartmental discipline. Both are considered administrative in nature and do not involve criminal acts. The good Judge Merhige made the following statement about invoking the full panoply of due process rights.

> Whether certain procedural prerequisites are required before intraprison discipline is imposed is governed by conventional due process standards, adapted as may be necessary to the prison environment. The argument that the rights to be free of the substantial restraints of solitary confinement, "padlock" or maximum security segregation or to earn statutory "good time" are matters of mere legislative or administrative grace fails in the face of current constitutional doctrine * * *. In these adjudicatory proceedings the Court concludes that certain due process rights are both necessary and will not unduly impede legitimate prison functions * * *. Necessarily a hearing encompasses the right to present evidence in defense, including the testimony of voluntary witnesses.
>
> A hearing must be preceded by notice in writing of the substance of the factual charge of misconduct. Only with written notice can a prisoner prepare to meet claims and insist that the hearing be kept within bounds * * * minimum due process standards are necessary when solitary confinement, transfer to maximum security confinement, or loss of good time are imposed, or a prisoner is held in padlock confinement more than ten days.

I ask you, is confining a prisoner to his cell for more than 10 days, a prisoner who is presently incarcerated, a more serious punishment than unduly suspending a police officer and denying him his salary for 31 days? Apparently so, according to the courts.

The cases go on and on, but the fact is relief is needed now. I would like to proceed to a discussion of the arguments raised against the bill by the Justice Department report of last year and by other Members on the floor of the House last month. I also will include as appendix B some of the objections that have been raised by various people in letters to me. [See p. 137.]

Major objections to my bill were raised in a report from the Justice Department dated June 12, 1972. The Attorney General disapproved of the legislation based on three arguments:

1. The bill would be "an undesirable intrusion into the activities of States and local units of government, which should be responsible for assuring the rights of their law enforcement officers.
2. The bill would provide for Federal supervision of State and local law enforcement.
3. The bill violates the Hatch Act by permitting political activity.

I will take these arguments in reverse order. Regarding political activity, in drawing up the bill, I sought a comprehensive statement of all rights of law enforcement officers. I firmly believe that a law enforcement officer should have the right to participate in political activity during off-duty hours, especially when you consider the rhetoric we have heard in the last decade in our country, where everyone should participate, poor as well as rich, educated as well as the illiterate. Laws have been changed to permit every person in our country to participate in the elective process. And yet we have a very substantial segment, the law enforcement officer, who has much to contribute in a responsible fashion, being denied his right.

I recognize that this would require changing the Hatch Act at the Federal level and similar provisions at the State level. Such a requirement would be difficult to include in a final version of this bill. Should the committee so choose, I would certainly concur with deleting that section. Nevertheless, my belief that police officers and all public servants should have the right to participate in political activity remains firm.

Concerning their second objection, there is no requirement for Federal supervision of State and local law enforcement in my bill. The Law Enforcement Assistance Act already requires certain minimum standards and insists on a State plan for the use of the funds. The bill merely says that if a State or unit of local government is to qualify for funds they must have a mechanism to guarantee every police officer's basic civil rights.

Related to this question is the Attorney Generals' primary objection: the bill would violate State's rights or be an intrusion into the activities of States and local units of government.

This argument probably sounds very familiar. It is the same argument used against the Civil Rights Acts. The fact is in the 1960's when the Congress saw that constitutional rights were not being guaranteed to every American, it enacted laws that would cut off Federal funds to a State until these rights were assured. On this authority, the Federal Government has ordered busing of children intracity; ordered conformity with certain standards of education, instruction, staffing and attendance; and required local educational systems to spend money and do all sorts of things. No one will argue that the Civil Rights Act and many of the directives from the Federal Government that ensued were not important and worthwhile.

Why then is it so difficult to place a similar requirement on the States to assure the rights of law enforcement officers? Must these men conduct marches in the streets, engage in civil disobedience or conduct riots? Is violence the only force that will move Congress? I think not.

Perhaps we are seeing the demonstration of the police officer's frustration in the instances of brutality that occur. Perhaps the lack of motivation to perform his tasks well is based on a police officer's perception that he has no rights under the law so why bother enforcing someone else's?

The Justice Department's arguments are really weak. They readily admit that they believe "State and local law enforcement officers should be afforded many of the rights contemplated by my bill."

Let me repeat that. "State and local law enforcement officers should be afforded many of the rights contemplated by my bill."

They state further in their report:

> It should be noted, however, that the Department of Justice is not unmindful of this important area of law enforcement. We believe that there is a need for minimum standards with respect to police grievances and the intervention of police conduct. In fact, the specific subject of rights of police officers will be addressed in the forthcoming report of the National Advisory Commission on Criminal Justice Standards and Goals.

That is in the Department of Justice letter. We don't disagree.

Ah, yes. Let's study the problem—study it to death. The time for action is now. This committee should not wait for some administration report on the problem. It is clear that there is an urgent need for enactment of this type of legislation. If the Justice Department wants to offer constructive suggestions for improving the bill, let them do so.

And I will be delighted to participate with them in the process.

A major argument that appeared on the floor was that this bill, if enacted, would require States and localities to alter their laws and ordinances to meet the provisions of the bill, and thus qualify for LEAA funds. This is true. I would remind the committee that the States and localities were required to repeal their "Jim Crow" laws prohibiting blacks from obtaining full rights as citizens and States were required to enact voting rights laws that gave every citizen the opportunity to participate in the political process.

Others argued on the floor last month that the bill's 1-year phase-in period was too short since some State legislatures only meet biennially. This is a valid criticism and calls for a change in the bill to make it effective 2 years from enactment.

Gentlemen, the time has come to assure every law enforcement officer that the Constitution protects his rights as a citizen as well. In all aspects of dealings with police officers whether administratively or otherwise, basic due process and other constitutional rights must be assured. I believe my bill does this without any undue hardship on the States. New York, for example, was among the first to draft such a bill of rights.

Many portions of my bill are being practiced in New York City. So the argument that it would be an imposition is kind of (not clear). My bill is based on the provisions of those regulations which have worked well over the last several years. A copy of that bill of rights will be included in my testimony as appendix C. [See p. 141.]

Recently, in Memphis, Tenn., the police association negotiated the inclusion of a law enforcement officers bill of rights in their operating contract. A bill of rights that used my bill as a model. The Maryland House of Delegates passed a law enforcement officers bill of rights in the last session of that legislature. California has such a bill under consideration as well.

We are not talking about a strange creature not practiced, not adopted, not used. It is on its way. It is on its way in some of these forward looking and vigilant departments.

I urge the committee to schedule further hearings to receive testimony from the many police organizations throughout the country on the cases that they have in their files. Let them speak out about the injustices they have experienced in their own police departments.

The time for enactment of this legislation is long overdue. I hope the members of this committee will share that view with me and report the bill to the floor as soon as possible. I thank the committee for its time today and for the opportunity to be heard. I am hopeful we will have some action. I will be delighted to answer any questions.

I would like to observe we have with us the president of the International Conference of Police Associations, Mr. Edward J. Kiernan, formerly the president of the New York City Patrolmen's Benevolent Association. Also in the audience, his predecessor, president of the Patrolmen's Benevolent Association, Mr. John Cassese. I am sure they will make themselves available to questions as well as myself.

Mr. EILBERG. As far as other witnesses are concerned, we limited witnesses today, Congressman, and I hesitate to open the door to civilian witnesses at this time because this may prolong the situation unduly.

Mr. BIAGGI. I just brought it to your attention, Mr. Chairman. I am aware of the rule.

Mr. EILBERG. Congressman Biaggi, obviously, you have gone to a great deal of trouble in preparing that statement. It indicates a lot of work and the committee is grateful to you for such a notable presentation based upon a great deal of research.

Mr. BIAGGI. In 23 years as a policeman and 5 years as first vice president of PBA, I know the problem and know it well.

Mr. EILBERG. We should have your qualifications for the record. Twenty-three years as a policeman?

Mr. BIAGGI. Five years as first vice president of PBA.

Mr. EILBERG. Meaning?

Mr. BIAGGI. New York City Patrolman's Benevolent Association and legislative representative for the New York State Police Conference, and president of the National Police Officers Association, during my career of law enforcement.

Mr. EILBERG. Many of us have not been policemen or police officers. I was an assistant district attorney in Philadelphia for a short period of time. So many of your experiences are new to me and I may be repetitious in some of the questions I ask which you have covered in one way or another. I may ask you some repetitive questions but which may help clarify some doubt or concerns about the bill.

I know in my own city of Philadelphia that political activity is barred by police officers by our Philadelphia city charter. So I assume you meant that if your bill, or a modification of it, became effective, the city charter would have to be amended.

I raise the question whether it is desirable that a police officer should have the same political rights as any other citizen?

Mr. BIAGGI. Yes; I do.

Mr. EILBERG. Does that include membership in a political party, say as a district committeeman, or as a ward leader? Would you place any limitations at all upon political activity?

Mr. BIAGGI. No. The only limitation I would place on them is that they be prohibited from participating in political activities while on duty. Because the fact of the matter is that, by and large, currently they do infuse the political system by their articulation not in political clubs, but social and fraternal clubs.

Mr. EILBERG. What would be your reaction if a police officer were an active party member, such as a committeeman in Philadelphia and his occupation was to be used as a means to apply pressure against the citizens in his voting district. In other words, I could see the possibility that some member of the committee might feel that I had better go along with this fellow or maybe he will get after me for not keeping my sidewalk clean and that sort of thing.

I would like to know what your reaction is to that.

Mr. BIAGGI. I understand the point you make. What you do, really, is give so much more prestige to the committeeman than the position itself deserves. I think we are talking in terms of 1973 as contrasted to 1873, when there was no communication and there—there was an oppressive attitude and where the police and the rights of people were hardly ever communicated or clearly defined.

We are talking about 1973. That condition couldn't exist today. And what influence he would have, he would have anyway, whether he was a committeeman or otherwise. If he is an opinionated police officer, he can communicate his opinion. I don't think the argument holds. I am aware of it and in fact anticipated that type of question. But we are talking in terms of a new age of understanding and relative rights.

But let's assume the exception rather than the rule. To begin with, I don't know how many police officers would actually participate, but I think they should be encouraged to participate, and for those who would participate, I am sure they would be mindful of the rules. If they violated those rules, they are subject to disciplinary action like any other violation.

Mr. EILBERG. I refer to a municipality like my own, in which I anticipate many would become politically active just as we permit public school teachers to become active politically as many do in the city outside of school hours. So I see no reason why the police officers wouldn't. But I am wondering how it would work.

Mr. BIAGGI. Let's pursue it with the teachers. What greater entry into a home could we have than through a teacher who is held in high regard and by his access to the children, has access to the parents, and the relationship is one where the parent is concerned about the progress of a child. I don't think it would happen on a universal basis. There would be some exception, of course. We deal with the exception but we don't legislate by exception.

Mr. EILBERG. What procedures are there in New York City for processing police grievances or adjudicating complaints against police officers?

Mr. BIAGGI. Well, it would depend upon the type of complaint. We do have a complaint review board of sorts. They have a bill of rights, which I have here. It was adopted in 1967 and it was amended in April 1967, and August 1967.

Mr. **Eilberg.** I wonder if I might interrupt so we can go over and vote and come right back.

[Brief recess.]

Mr. **Eilberg.** The last question, I think, was, what was the situation in New York City with regard to processing police grievances and adjudicating complaints against police officers?

Mr. **Biaggi.** Since 1967, what has resulted is a more efficient disciplinary process. It eliminated the argument that the disciplined officer generally proposed or advanced in the courts that he was denied his rights. Because of these proposals, this bill of rights, is very carefully applied.

In addition to that, in the light of the bill of rights situation, what we have is called a captain's mast; most of the problems are settled at the local level.

Mr. **Eilberg.** Now, captain's mast is something with which I am familiar. We have that in our Philadelphia system. Has a bill of rights similar to what you have been proposing been adopted partially, or what procedures are there in New York City that could be used as a basis for the proposed legislation?

Mr. **Biaggi.** There is a bill of rights adopted by the New York City Police Department for its members. It is authorized by TOP Order 167, dated April 26, 1967, and amended by TOP Order 167–1, dated August 8, 1967. And these provisions, some of those, are incorporated into our bill of rights.

Mr. **Eilberg.** Can we have those?

Mr. **Biaggi.** They are part of my submission, appendix C.

Mr. **Eilberg.** All right. How is it working? I mean, are the bill of rights to which you are referring being applied? What results do you see?

Mr. **Biaggi.** I think it has been the most salutory administrative action taken in the police department in all of my career. This will be testified to by the representatives of the members of the police department organizations and by the superior officers and by the administration.

Mr. **Eilberg.** You mentioned the Knapp Commission. Did the Knapp Commission make any recommendation with respect to the internal machinery in New York City for disciplining police officers?

Mr. **Biaggi.** I don't think the Knapp Commission was constituted for that purpose. I testified that even Mr. Knapp, I think he is a judge now, I believe, placed the police officers and their rights, constitutionally provided rights, in a secondary position. He ultimately made conclusions that I thought were detrimental to morale, but he didn't make any propositions that would improve the conditions that we complain of.

He even acknowledged that it, the hearings, had circus-like quality, his hearings did, and it was a controversial conclusion and controversial project. It may have served some purposes in that we focused attention on the corruption that existed in this police department and attempts to ferret it out should be pursued with renewed vigor. Whether or not it will be completely ferreted out remains to be seen, but we should remain vigilant.

Mr. **Eilberg.** May I ask a philosophical type of question now, would the effect of this legislation be to erode present personnel policies?

In other words, I can readily conceive how the rank and file might be for it and how supervisory personnel might be opposed to it. Supervisory personnel might feel that your legislation may interfere with their ability to manage their department, since there are provisions restricting transfer, reassignment. How do you react to that proposition, Congressman Biaggi?

Mr. BIAGGI. In the absence of experience, those arguments seem to have some credibility. We had an absence of experience prior to 1967. However, we have had 5 or 6 years of experience since and those arguments have been found to hold no water.

Mr. EILBERG. With respect to the New York police?

Mr. BIAGGI. That is right.

Now, let's talk in terms of superiors and administrators. We have all types of superiors and all types of attitudes and we have the same problem with police officers. We recognize as a group they do present problems in law enforcement and they should be culled and treated first and if they can't be treated, then they should be removed because these attitudes create the tense situations that develop between the community and themselves.

We have superiors we assume by virtue of the newly vested authority upon promotion an arrogance, that the position doesn't justify, and they proceed to conduct themselves in arrogant, ruthless, and improper fashion. But, by and large, the superiors when enlightened, when we talk in terms of improving the job, improving relationships on the job, and creating a happier state of mind universally within the police department, agree, and like this administrative action.

Let's bear one thing in mind. The thrust here is not to protect any wrongdoing police officer. The thrust here is to increase the efficiency. How do you increase the efficiency? Improve morale. You do that by many ways. By virtue of this bill, the police officer is assured, at least, he is afforded the same opportunity as anybody else.

Two, he is provided with an opportunity to be represented and take advantage of all of the privileges that any American should have.

It has been said in police departments, the only police officer who gets in trouble is the police officer who is active. Because there isn't a mechanism established to protect him when he is right. The accusation comes from the outside in one instance, and the superior with the erroneous attitude proceeds to destroy. He is not even objective any more. The law requires an objective approach.

What we are really asking for, to paraphrase it in as simple language as we know how, is to afford the officer the same rights that we afford the people that they arrest. It is as simple as that.

Mr. EILBERG. My next question, isn't it true that many law enforcement agencies already have an adequate mechanism for handling grievances, whether they are citizen grievances or police grievances? That is not to say there could not be improvements and perhaps your bill may be a vehicle for that, but are not many law enforcement agencies already moving in the direction you describe?

Mr. BIAGGI. Yes. Yes; they are. They are moving. They should have arrived. That is the difference. They are moving imperceptibly. At an imperceptible pace if we are talking in terms of progress.

But let's talk about the mechanisms. To begin with, the police officer, frankly, with the incorrect attitude as measured in his mind, he is measured by the amount of convictions he obtains. In the parlance of the police department—how many policemen he can destroy. How many policemen he can bring up on charges and fire. That is not the purpose. Ultimately, if he can do that with justification, and preserving due process, fine.

But what we have is trial rooms in New York. Even that is improved somewhat; it is almost a star chamber proceeding.

Let's start from the very beginning. You are afforded an opportunity to engage counsel in trial room. But let's start from the very beginning; that is where it is at. I know the learned chairman is an outstanding member of the bar and you know full well that a person's rights, in order to be preserved at all, must be protected from the beginning. Ofttimes, we just about surrender all of them by virtue of that void of no early representation.

I don't believe that the mechanisms currently established across the Nation are adequate to protect the police officer's rights.

Mr. EILBERG. Is this a situation or condition which is peculiar to New York City or other cities in the country because I do believe the rank and file would be for the propositions that you are mentioning? I don't recall receiving many complaints personally and I would say that the rank and file are among my supporters in my own city of Philadelphia. How do you respond to that?

Mr. BIAGGI. I think the whole police profession is burdened with this difficulty. I would like to point again that the Department of Justice in its letter did acknowledge that there is something, there should be a standard, a minimum standard, there is some merit to the proposition that police officers should be provided with something, and you will find in further testimony that the police officers organizations will testify in support of my bill of rights.

Mr. EILBERG. Let me ask this: you naturally want to see improvement in all police departments, not simply a majority of them?

Mr. BIAGGI. I want them all subjected to my bill of rights.

Mr. EILBERG. In the majority of police departments, is there not presently some underlying legal authority in the form of State or local law, civil service regulations, departmental regulations? In other words, is there not a mechanism presently in the majority of places?

Mr. BIAGGI. No; I would have to reply in the negative. For those that do exist are administratively applied, again, by people in positions who just about use the awesome power of their position to overwhelm and deny.

Mr. EILBERG. You know that the statement you have just made has been contradicted. There are people—and I just happen to be looking at an article by Mr. R. Dempsey, published in May, in which as a result of his study in 1970–71 on police departments, he reports in the majority of police departments, some underlying legal authority in the form of State and local law, civil service rules or department regulations, for disciplinary action, processing charges against police officers presently exists.

Mr. BIAGGI. Oh, yes. I am not quarreling with that. That wasn't my response, Mr. Chairman. What I said is, there is no valid one. Sure, it is there. I am not even quarreling with the mechanism for discipline. We are not quarreling with discipline. We are not quarreling with any lawful process in pursuit of a lawful objective. We are quarreling with the denial of rights in the course of this first objective. That is what we are seeking here.

Mr. Eilberg. I might take this occasion to ask the reaction to the task force appointed by the President, the Commission on Law Enforcement in the Administration of Justice, which evidently takes the position that procedures should be improved and not eliminated or changed.

Mr. Biaggi. Which procedure?

Mr. Eilberg. I don't have the details of the procedures, but apparently there has been a Federal study on disciplinary procedures.

Mr. Biaggi. No problem with disciplining procedures. We are talking about two different things. That is the point we are making. I am talking in terms of the manner in which you initiate an investigation, conduct the investigation, that is what I am talking about. What they are trying to equate, they are equating disciplinary proceedings there to the trial of a prisoner. That is fine. Nobody quarrels with court procedure. As we don't quarrel with the trial room procedure, because, as I said before, that is progressing. At least in New York City. I don't know if that is universal. That study would have to be further analyzed.

What we are complaining about is the period preceding that.

Mr. Eilberg. Would the provision in H.R. 4598 limiting the financial disclosure of law enforcement officers restrict investigation of graft and corruption? In other words, are there not times when the financial disclosures of law enforcement officers might be proper?

Mr. Biaggi. Absolutely. I said that in my statement, if you recall, Mr. Chairman. Absolutely. And I made this point, I made it a very narrow point. Let me address myself to it.

You are talking in terms of a value judgment, re personnel assignments and their fiscal condition. A man is asked to submit a questionnaire. First, what is wealth? What is relative wealth? What kind of judgment do you use? Would you assign a man to a place because he is poor? Using the rationale that this is a poor man, so hence he is an honest man, or would you take the other rationale, don't assign him because he is poor and he might fall victim to corruptive efforts?

On the other side, if he by virtue of some investment or inheritance or whatever, legally obtained funds, he is a man of some affluence, you, will, you want to read he acquired that money by illegal means.

You know, when this was first used in New York City—I just rebelled at it. As far as questionnaires, we have had questionnaires in the New York City Police Department and many other departments throughout this country, to deal with corruption. I have no quarrel with that, none whatsoever. I say this does not fit in any personnel director's intelligence as far as using that within his contemplation of making an assignment, on the basis of man's personal wealth.

That is the point. It is a very narrow one but it is a frustrating one.

Mr. Eilberg. My attention now goes to existing organizations like the Fraternal Order of Police. We have one that is very important and very effective, I think, in my own city of Philadelphia. I don't say that for the benefit of anyone in the audience, although we have Philadelphians present. I think that there is a pretty good grievance procedure in existence there. We don't hear complaints of the kind that concern you or those to which you are addressing yourself.

Would not legislation such as you are suggesting set up an entirely new system and, in fact, disrupt F.O.P. type operations?

Mr. BIAGGI. I think not. I am sure in many departments at least in some departments throughout the country, we don't have this abuse. But on the other side of that coin, we don't have the protection that this bill would provide. We can't rely on an administrator's attitude, especially when we see such a quick turnover in administrators. It would never be our purpose to disrupt anything that is working and is effective.

I don't recall—I don't know if my file indicates—but if you have spoken to the Fraternal Order of Police, and I have many, many times. I am sure they would not object to this. No opposition.

Mr. EILBERG. I believe that is a correct statement. I think you also know and, of course, my position is peculiar here but I come from a city where the gentleman went up through the ranks and became police commissioner and then became mayor of the city of Philadelphia. And while he was at a supervisory level or above, I think maybe there has been disagreement, but pretty good attention was given to the rights of the policemen in our particular locale. I think you would agree with that.

Mr. BIAGGI. No question about it but you don't have too many people like that. You don't have that set of circumstances in every department.

And even then, that would be administrative. If I recollect, that might be administratively changed, which could be amended subsequently by perhaps a less friendly, less equitable thinking man.

Mr. EILBERG. Speaking of police misconduct or charges of police conduct, or perhaps the kind of individuals who become rank and file policemen, who may be charged with police misconduct, could we not do better by improving the screening, training, and supervision of law enforcement officials, thereby reducing the chances that we might have individuals who engage in misconduct?

Mr. BIAGGI. Well, as a former police officer, I take great pride in the fact that I served for some 23 years, and I have great affection for my department as well as the police departments throughout the country. I couldn't agree with you more. I think the standards should be high, high standards should be maintained. As a matter of fact, they should even be made more severe.

Now, that flies in the face of conduct of people in some cities, where they urge that the standards be reduced. And the utterances, the same two utterances, are coming out of the same mouth. So you are talking about, as the Indians would say, "You talked with forked tongue." Sure, there should be screening processes and the standards should be elevated. They used to argue that increase the salaries and there would be less corruption. I think there is great merit to that argument and I think it has been sustained because here has been a diminution of corruption, notwithstanding the exceptional cases that reach the papers.

Mr. EILBERG. There is much talk about Federal Government interfering or involving itself too much in matters that are State or local. Are things so bad that Federal legislation is necessary? Have you given up in terms of States and municipalities addressing themselves to this problem in their own way?

Mr. BIAGGI. Yes. Notions like these should be universally adopted by each local agency. But the pragmatics of the problems point out it will not be done. We found the same thing with civil rights.

The Constitution provided—we found many places in our country where the rights of people were denied until the Federal Government became involved.

We have a perfect illustration. The Federal Government is involved in almost every facet of living—municipal, State, or whatever. The money has trickled down into every area, which relates even to the Hatch Act. Initially, when the Hatch Act was enacted, I don't know how many thousands of people were involved, but the Federal money found its way in every agency in the strict application of the Hatch Act. Nonpolitical activity could deny millions and millions of people by virtue of that principle, from the right of participating in political activity.

LEAA itself—and I think this is a critical observation—the LEAA itself has established certain guidelines. In order to qualify for these funds, A, B, C conditions must be met. Just recently, a directive came out that in order to qualify the mandate is that police departments must eliminate height requirements.

Also, in the bill we just passed in the House not too long ago, sex discrimination. In order to qualify, sex discrimination must be avoided.

So what we are really talking about is just another guideline.

Mr. EILBERG. You mentioned the Hatch Act. How would you reconcile the provision which allows the law enforcement officer to engage in political activity when he is paid in part or in full by Federal LEAA funds, thereby making him or her a Federal employee and prohibited from engaging in such activity by the Hatch Act.

Mr. BIAGGI. I don't know if he is in fact paid by the LEAA funds, whether his salary comes from that. My understanding, some funds come into special projects which affect limited numbers. And then they buy hardware and equipment.

But again, the point I make, we will reach a point if we strictly apply the provisions of the Hatch Act, we will disenfranchise politically millions and millions of Americans. It is time to review the validity of the Hatch Act.

Mr. EILBERG. Are you saying perhaps the Hatch Act has to be amended?

Mr. BIAGGI. No question in my mind about it.

Mr. EILBERG. You present a real probability of a conflict. There might be violations of the Hatch Act if we were to carry our proposal out and this would probably, in my opinion, require other changes of law.

Mr. BIAGGI. Right. I think in my statement I referred to that. I said it would require several changes. That isn't the main thrust of the bill. I think it will be salutary and that it would well start the Government thinking in the proper fashion, but if it troubles the chairman and the committee, I would be perfectly willing to delete it from the provisions.

Mr. EILBERG. Is there any precedent for the enactment of this proposed legislation; that is, does any other group have its Federal grants contingent upon the developing of a system or processing internal and external grievances? In other words, are you aware of any other, let's say, group of State or local governmental employees that would be tied to Federal grants?

Mr. BIAGGI. No, I am not, frankly. I don't know that they exist otherwise. But I think the case spelled out, I spelled out this afternoon in my testimony and which will be further sustained by supporting testimony, will very clearly define the proposition that the police officer is in a very unique position and requires specific assistance as a result.

Mr. FISH. Would the chairman yield?

Mr. EILBERG. I would be happy to yield.

Mr. FISH. This doesn't pertain to the law, but at the end of the last Congress, Chairman Kastenmeier, a subcommittee of this committee, reported out unanimously a proposal to reform parole procedures which had a section in their amending LEAA, which did require due process standards for parole hearings, among other things. That is a parallel example, an effort that the subcommittee felt was justified under those circumstances.

Mr. EILBERG. That is interesting. That is one answer to my question. I would just ask another question. Since it is a statutory requirement that LEAA funds not be used to supplant what is State and local obligation, wouldn't this legislation be in direct conflict with the LEAA legislation? In other words, we say that whatever is State and local remains that way and LEAA funds are not supposed to be used to supplant what is a State and local operation; that LEAA is supposed to supplement?

Mr. BIAGGI. Well, that is true. I don't fault it. I just want to add one more condition. The LEAA has established any number of conditions which must be met in order for the local and State authorities to qualify for the funds. I just spelled out two of them, in connection with sex discrimination in connection with eliminating height requirements. All I am askng is one more be added.

Mr. FISH. Mr. Chairman, sorry to interrupt again, but could I ask the witness, is your bill going to cost a penny?

Mr. BIAGGI. Not to my knowledge. I can't contemplate it costing any.

Mr. FISH. What bearing does this measure have on LEAA funds? I don't see any.

Mr. KEATING. Probably a vehicle by which you incorporate it into the whole provision. I think that is all it is. Is that right?

Mr. BIAGGI. Right.

Mr. FISH. It is not an expenditure of LEAA funds?

Mr. BIAGGI. No. It is not a question of funds. We are using this as a leverage.

Mr. EILBERG. The funds are cut off unless the bill of rights is complied with, as I understand it.

Mr. BIAGGI. It is just another condition. LEAA establishes conditions almost every year, or in the course of a year, which is adding another condition. A condition which I think is a valid one.

Mr. EILBERG. I understand that. I am not arguing it; I just want to be sure the members of the subcommittee have the facts.

I have just about run out of my questions, Mr. Keating. I realize you missed most of them.

Mr. Keating. I am sure it is my loss, Mr. Chairman.

Mr. Eilberg. Do you have any questions at this point?

Mr. Keating. I am sorry I missed your questions, and I would, if you don't mind, just make a few observations, possibly even some questions.

I have had an opportunity to see some of the police officers after they have been questioned about certain conduct and my observation is that the civil rights of the police officers are more often violated, in department and interlaw enforcement agencies across the country more than in other areas. As an example, oftentimes when a police officer is called upon to use his weapon in the furtherance of his police mission, he is questioned severely by the FBI, and other agencies as if he were already guilty.

I have been in close relationship with those situations and I am very sympathetic to his plight at that point.

I mention that because I firmly believe that the present situation for the police officer when he becomes involved in that kind of a situation is very serious. Because of this situation I can sense that oftentimes they might wish to turn the other way when there is a situation which they can identify as being a problem for him in the furtherance of his mission.

I am not accusing the police of avoiding those situations, but I can see that human nature being what it is, identifying himself in that position, it would certainly be pretty human to walk away from it.

I think unless the civil rights of the officer, the man on the beat, the man who comes into contact with the citizenry on a daily basis, unless they are protected, we are not going to have as good law enforcement as we deserve. I am not sure that the public really understands what happens when he is accused, or at least made answerable to certain charges. I don't think they understand the severity of it.

Now, those are my observations, and I don't know that I agree with you on every aspect of what you propose, but I certainly feel very firmly that what you do propose is something we should consider very carefully. The vehicle by which it is brought into play is important and I commend you for doing so in such a fine way and such a thorough way.

Mr. Biaggi. Thank you very much. Your observation, in my judgment, is absolutely right, because the thrust is to improve the efficacy of the police department. That is, in fact, the main thrust. Somehow in the discourse and exchange another facet seems to make itself more prominent. Some people get the notion it is our purpose to protect wrongdoers, that is not our purpose. It is our purpose to protect the rights of everyone, but really with one purpose in mind, so that we maintain a high morale, which would reflect itself in more effective police departments.

Mr. Keating. You know, when you talk in terms of becoming politically active, I might say that the FOP, in my community anyway, in seeing the problems of the law enforcement officer and is supporting certain candidates for certain offices. As a matter of fact, they come out opposed to some very strongly.

So they have been active in that sense. Not in uniform, although I am reminded of a situation where they wanted to support the school bond levy by wearing a button on their uniform and they were forbidden to do so. So one of the police officers had a bag put over his head, put a button on his uniform, and it appeared in the newspapers.

Mr. Biaggi. The message was delivered.

Mr. Keating. I might say just about everybody in the department knew who it was but the chief couldn't find out.

In any event, I don't wish to delay Congressman Fish. I have no further questions and I yield back my time.

Mr. Eilberg. Mr. Fish?

Mr. Fish. Thank you, Mr. Chairman.

Mr. Biaggi, we did establish one point I was going to bring up independently, that this amendment to LEAA is a condition, it doesn't require a separate appropriation.

Mr. Eilberg. May I interrupt?

Mr. McKevitt, could you hold a second. We are trying to work something out here. We want to give as full an exploration of the proposition as possible and I do know Mr. Wiggins cannot come back and he did want to ask you some questions. I am hoping your schedule will permit you to come back to be questioned the very first thing in the morning. That would also provide more members of the committee an opportunity to question Mr. McKevitt.

What we are proposing to do is close the hearing for today after we finish with you and I just want to know if that is all right with you. Can you be back tomorrow morning?

Mr. Biaggi. Sure.

Mr. Keating. Is Mr. McKevitt going to come back?

Mr. McKevitt. That would be better for me.

Mr. Eilberg. Proceed, Mr. Fish.

Mr. Fish. I think we were just establishing the fact the passage of your amendment does not require any increase in appropriations for LEAA. That is correct, isn't it?

Mr. Biaggi. Or any place else.

Mr. Fish. Now, what we have before us is an amendment to title I of the Omnibus Crime Control and Safe Streets Act, which title I is the law enforcement assistance provision. As I understand it, you have a new part E, law enforcement officers grievance system and bill of rights, which relates to grants under parts B and C, which define what is meant by the comprehensive plan the States must come up with to qualify. Just merely one more qualification; is that correct?

Mr. Biaggi. That is right.

Mr. Fish. Do you see any difference between your qualification and that which was recently added to the law that specified that the comprehensive plan must contain provisions for a good correctional system?

Mr. Biaggi. No. You almost talk in terms of the same principle—due process, rights, civil rights.

Mr. Fish. Just last week we had a conference report on the authorizing of legislation to continue LEAA for another 3 years, and one of the issues concerned a provision concerning juvenile justice and juvenile delinquency. The conference came up with the provision that, again, to qualify a State comprehensive plan must contain a comprehensive program of juvenile justice in treating juvenile delinquency. Do you see any difference in that provision and what you are proposing?

Mr. BIAGGI. No. It is another requirement.

Mr. FISH. That is certainly the way I view it, also.

Mr. BIAGGI. It is one of a series of requirements that must be met.

Mr. FISH. There is really one provision that concerns me and that is the existing act, the Omnibus Crime Control Act of 1968, contains section 516A, which says nothing contained in this title, which would include title I, shall be construed to authorize any department or agency, that would be LEAA, officer employee of the United States, to exercise any direction, supervision, or control over any police force or any other law enforcement agency of any State or any political subdivision thereof.

This is one of the arguments of the Justice Department as to why your legislation is inappropriate. You have answered this in part, I believe, by saying that already LEAA has issued regulations and that laws govern such matters as height standards for police forces and sex discrimination in police forces. Do you have anything else to add to negate the effect of this strong language which seems to say that no Federal department can exercise any supervision over a police force?

Mr. BIAGGI. To begin with, I agree with the Department of Justice's concern that there shouldn't be any exercise by the LEAA over the local and State authorities. I agree with that. But we don't have that problem here because the fact of the matter is we can talk in terms of our present experience. Currently LEAA has provided hundreds of thousands of dollars to New York City, millions of dollars to departments throughout the country. It is a very simple process.

LEAA has money to be utilized in these areas. In order to be eligible for these funds, you are required to meet certain standards, standards established by the LEAA. Not by anybody else, not by local or State authority, standards established by the LEAA.

Case in point. We just said, in your own observation with relation to juvenile delinquency having incorporated, the comprehensive plan must include addressing yourself to the problem of juvenile delinquency. The problem of eliminating sex discrimination, that is the law of the land now. However, the Law Enforcement Assistance Act is supplementing or bolstering that fundamental law. There will be no sex discrimination. Although we don't have a problem, really.

The argument that is advanced by the Department of Justice in opposition—I don't think it is germane—the theory that the LEAA shouldn't have authority over any of the political subdivisions is accurate, I couldn't agree with it more, but the fact is we have been living with the LEAA since 1968 and there hasn't been a single complaint of the LEAA imposing any authority.

Mr. FISH. Thank you very much, Mr. Biaggi. Thank you, Mr. Chairman.

Mr. EILBERG. Mr. Biaggi, Mr. Wiggins said he had a number of questions he wanted to ask you and couldn't you come back.

The bells are ringing and it is a good place to break. Can you come back at 10 o'clock tomorrow in this room? We will try to start as close to 10 as possible.

Mr. KEATING. I want to personally commend Congressman Biaggi for what he is doing in this area and for his spending the day with us, from a schedule that is very busy. Thank you.

Mr. BIAGGI. Thank you very much.

[Whereupon, at 4.:50 p.m., the subcommittee adjourned, to reconvene at 10 a.m., on Thursday, July 26, 1973.]

[The prepared statement and appendixes thereto of Hon. Mario Biaggi follow:]

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, this piece of legislation, my Law Enforcement Officers' Bill of Rights, has been one of my major legislative proposals since coming to Congress. When I was a police officer on the New York City Police Force, I recalled the work of Congress to grant most citizens in America basic rights guarantees.

I saw, however, that within the police department, these civil rights were not available to the man who was responsible for enforcement—the policeman himself. I made it my objective to get a bill in Congress that would guarantee these basic rights to law enforcement officers as well. That is what this bill does, it gives to these men the same basic civil rights guaranteed every other American, no more and no less.

Over the years that I have pushed for this bill, many have argued that the bill is unnecessary since these rights are guaranteed by the Constitution and the Civil Rights Act. Yet I would remind my colleagues that the rights in those laws are guaranteed by the Constitution as well, yet a legislative statement of civil rights was found necessary. I say to you, a similar statement of basic rights for policemen is necessary today.

Before I get into a discussion of the basic provisions of the bill and some of the cases that demonstrate the need for the measure. I would like to read to you portions of a bill of rights that was approved by the Federal courts for another group of citizens:

> Any decision to take disciplinary action against an individual must be made by an impartial tribunal:
>
> There must be a hearing, encompassing the right to cross examine adverse witnesses and present evidence in defense;
>
> There must be a written statement of the charges against an individual;
>
> Representation by a lay advisor or legal counsel must be permitted;
>
> The right to communicate for the purposes of enlisting an attorney's aid must be guaranteed.

These basic rights, presumably guaranteed by the Constitution and Civil Rights laws, were enunciated by Judge J. Merhige of the U.S. District Court for the Eastern District of Virginia. He rendered his decision on behalf of prison inmates. Yes, convicts are now guaranteed basic civil rights, while these same civil rights are denied police officers. (A complete copy of his decision is annexed as appendix A.)

In his decision—and this has great bearing on the need for my bill since the situation in many respects is similar—the Court said that "injunctive relief would issue, where evidence adduced in respect to administration of discipline within prisons disclosed a disregard of constitutional guarantees of so grave a nature as to violate the most common notions of due process and humane treatment * * *. It was further held that in order to discipline prisoners confined to state penal institutions, certain due process rights are necessary. * * *"

The case I will present here today is that the circumstances which led to that court decision are similar in nature to the circumstances facing police officers today and as such clearly demonstate the need for legislative relief.

Briefly. I would like to review my legislation, which is now cosponsored by 130 of my colleagues.

The bill seeks to establish two things: a Bill of Rights for Law Enforcement Officers and grievance commissions. These items will be required of any State that applies for Federal funds under the Law Enforcement Assistance Act.

Under the bill of rights, the following would be granted:

> A police officer would be permitted to participate in political activities while off duty.

Law enforcement officers under investigation must be notified about the time and place of interrogation, the nature of the complaint against him and the names of the complainants and his legal rights.

An officer under intra-departmental investigation should be entitled to legal counsel.

Police officers must have equal representation on any complaint review boards.

A disclosure of an officer's personal finances shall not be routinely required for purposes of assignment or other personnel action. Such information shall be obtained only under proper legal procedures.

An officer must be notified and given the reasons for any punitive actions taken against him prior to the effective date of such action.

All complaints against law enforcement officers shall be duly sworn to by the complainant.

Interrogating sessions shall be for reasonable periods and shall be timed to allow for personal necessities and rest periods.

During interrogations, no threats of transfer, dismissal or disciplinary action shall be made nor promises of reward offered.

The complete interrogation shall be recorded and the record made available.

If the officer is placed under arrest or is likely to be placed under arrest, he shall be advised of all his rights.

The right of law enforcement officers to bring civil suits against others for damages suffered or for abridgment of their civil rights arising out of the officer's performance of official duties shall be recognized and they shall be given assistance to do so when requested.

Law Enforcement Officers Grievance Commissions are provided for in recognition of the fact that the only avenues of redress of civil rights grievances available to the law enforcement officer at the present time are courts or the chain of command of the police unit. These are not always desirable nor satisfactory.

The average citizen is given other opportunities for resolving his grievances without having to go through formal court procedures. We have established, for example, the Equal Employment Opportunities Commission. Many States have Human Rights Commissions. The Grievance Commissions are simply a special body to deal with the unique problems faced by police officers and a recognition of the fact that police officers oftentimes, cannot find satisfactory relief from other units set up to adjudicate complaints of denial of rights.

Now I would like to present to the Committee some examples of the many cases that have come to my attention over the years.

In one such case, three police officers in Waterbury, Connecticut were fired by the Police Superintendent on charges that they attempted "to cheat and defraud the City of Waterbury" by planning a sick-call job action. Emanuel Carosella, one of the fired officers and president of the police organization claims he was in the basement of his home sometime after 11:00 p.m. together with the other two officers when the Police Superintendent forced his way into the house by breaking a locked door. The Police Superintendent, says Carosella, then pushed aside Carosella's wife, and after confronting the three officers accused them of planning a job action and suspended them on the spot. The next day—the day the job action was supposed to occur—Carrosella points out that only one man in a 300 man force called in sick. In the ensuing civil service hearing, testimony showed that the Superintendent was trespassing and had entered the Carosella home illegally. The men nevertheless were dismissed from the force. The officers have since been seeking redress to no avail. They even tried, in vain, to press charges against the Superintendent, but the local prosecutor refused to have the warrants served.

Former Police Officer Carosella and his two companions are still wondering whether the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" so eloquently put in the 4th Amendment of the Constitution of the United States and so much a part of modern police investigations, applies to police officers as well. They look to my bill for a ray of hope for themselves and the other police officers subjected to the same maltreatment.

In another case, a Los Angeles Police Department "audit" resulted in a petition, filed by four members of the detective division in Superior Court in 1971, charging that their civil rights were being denied in that they had been "illegally confined and interrogated" from 8:30 a.m. to 5 p.m. daily over a period of days and that their phones were tapped and they had been denied legal counsel.

In New York City, former Police Commissioner Patrick J. Murphy ordered top commanders last August to reveal all their personal finances in a detailed questionnaire, a practice instituted some years earlier for men in the lower ranks. His reasoning was to "seek information * * * to determine whether a detail * * * should be continued." This sort of activity leaves entirely too much room for personal judgments about a man's morals based solely on the evaluator's interpretation of either the degree of assets the man has accumulated—or failed to accumulate. The provision in my bill limiting such inquiries would guarantee that financial worth will neither restrict nor enhance a man's chances for choice assignments.

The New York City Knapp Commission, a unit created by the Mayor to investigate possible corruption in the City's police department, has also raised certain questions regarding the most effective way to improve police performance. It chose to make public displays of its hearings in which several suspected police officers charged with crimes were used as witnesses against police in general. After the early hearings, the Commission made the blanket charge that a pervasive climate of corruption among New York City police existed and that rookies who come into the department are faced with the situation where it is easier for them to become corrupt than to remain honest. No doubt the thousands of dedicated rookies and the many other aspiring to become police officers in New York City were duly intimidated by so general an indictment! It is this kind of demoralizing public damnation that I hope to counter with my bill.

Chairman Knapp himself had some misgivings about the technique employed by his Commission, saying: "In the first set of hearings, there were the obvious dangers of doing unjust damage to police morale and the fact that they might jeopardize civil liberties."

In any event, Chairman Knapp became convinced that, in spite of the spectre of a political circus haunting the hearings, the civil liberties of police were secondary to the main thrust of the Commission's work.

The pervasiveness of the sort of treatment I seek to eliminate is demonstrated by two other cases. One, in North Tonawanda, New York, involves a police officer who was ordered to appear before the full City Council after an argument over police working conditions with one of its members. He was questioned by the Council and penalized seven days vacation for his failure to apologize to the City Councilman! After refusing to accept the Council's decision, he was formally charged by the Council and then tried (by the same Council). Although never informed of the specific charges, he was declared guilty and suspended for 30 days without pay.

The shocked officer recovered enough to file an action in the Court of Appeals in Rochester, New York. The court ordered that the officer should be re-instated with back pay.

The other case occurred in Mt. Holly, North Carolina, in which a Police Chief was dismissed for conduct unbecoming a police officer allegedly as the result of his efforts to block a plot by a local Ku Klux Klan group to take over the police department. Although the dismissed Police Chief was cleared of the charges and was later re-instated by a bold City Manager, lawsuits were filed and the question of violations of civil rights remained unanswered.

Two court cases have particular significance. They show the timerity with which the Judiciary acts to enforce the rights of law enforcement officers.

In a case in California (Norton v. City of Santa Ana, Cal. Reptr. 37. 1971), a former city police lieutenant, who was dismissed for violation of departmental rules and regulations, sued for reinstatement but his claim was denied by the court. The court stated his dismissal was based at least in part, on lawsuits the lieutenant had brought against the police chief for libel and slander. The court held that the lieutenant's actions constituted a personal vendetta and a direct challenge to the authority of the Chief to manage and supervise his department, the effect of which was to create internal dissension on a grand scale if allowed to continue. The court ruled the plaintiff lieutenant was not denied his constitutional right of access to the courts. However, it sounds like we are talking more about keeping the slaves in their place rather than protection of basic civil rights.

In another case (Grabinger v. Conlisk; USDC NIll, 12/19/70), two Chicago police officers brought an action under Section 1983 of the Civil Rights Act contending that they have a constitutional right to counsel during a polygraph examination and to have an attorney present at a hearing before the Complaint Review Panel. The officers were charged with brutality and refused to submit to a polygraph examination unless they could have an attorney present. The officers were suspended for 15 days upon the recommendation of the disciplinary panel of the police department.

The Federal District Court for Northern Illinois noted that a law enforcement officer is in a peculiar and unusual position of public trust and responsibility and because of this the public has an important interest in expecting the officer to give frank and honest replies to questions relevant to his fitness to hold public office. The court considered the small maximum penalty the Panel could recommend (less than 31 days suspension) and found neither a denial of a right to counsel nor a violation of procedural due process. The court recognized—and this is the shocking part—if every officer who appeared before the Panel were to invoke the full panoply of judicial process, serious impairment of the disciplinary processes of the Chicago Police Department could occur. In other words, granting of such rights would be impractical to carry out because of institutional and organizational limitations.

Contrast this with the decision of Judge Merhige in defining the rights of convicts. Bear in mind that intraprison discipline is on much the same order as intra departmental discipline. Both are considered administrative in nature and do not involve criminal acts. The good Judge Merhige made the following statement about invoking the panoply of due process rights:

"Whether certain procedural prerequisites are required before intraprison discipline is imposed is governed by conventional due process standards, adapted as may be necessary to the prison environment. The arguments that the rights to be free of the substantial restraints of solitary confinement, "padlock" or maximum security segregation or to earn statutory "good time" are matters of mere legislative or administrative grace fails in the face of current constitutional doctrine . . . In these adjudicatory proceedings the Court concludes that certain due process rights are both necessary and will not unduly impede legitimate prison functions . . . Necessarily a hearing encompasses the right to present evidence in defense, including the testimony of voluntary witnesses.

"A hearing must be preceded by notice in writing of the substance of the factual charge of misconduct. Only with written notice can a prisoner prepare to meet claims and insist that the hearing be kept within bounds . . . minimum due process standards are necessary when solitary confinement, transfer to maximum security confinement, or loss of good time are imposed, or a prisoner is held in padlock confinement more than ten days."

I ask you, is confining a prisoner to his cell for more than ten days a more serious punishment than unduly suspending a police officer and denying him his salary for 31 days? Apparently so, according to the courts.

The cases go on and on, but the fact is relief is needed now. I would like to proceed to a discussion of the arguments raised against the bill by the Justice Department report of last year and by other Members on the Floor of the House last month. I also will include as Appendix B of some of the objections that have been raised by various people in letters to me.

Major objections to my bill were raised in a report from the Justice Department dated June 12, 1972. The Attorney General disapproved of the legislation based on three arguments:

1. The bill would be "an undesirable intrusion into the activities of states and local units of government, which should be responsible for assuring the rights of their law enforcement officers.

2. The bill would provide for federal supervision of state and local law enforcement.

3. The bill violates the Hatch Act by permitting political activity.

I will take these arguments in reverse order. Regarding political activity, in drawing up the bill, I sought a comprehensive statement of all rights of law enforcement officers. I firmly believe that a law enforcement officer should have the right to participate in political activity during off-duty hours. However, I recognize that this would require changing the Hatch Act at the federal level and similar provisions at the state level. Such a requirement would be difficult to include in a final version of this bill. Should the Committee so choose, I would certainly concur with deleting that section. Neverheless, my belief that police officers and all public servants should have the right to participate in political activity remains firm.

Concerning their second objection, there is no requirement for federal supervision of state and local law enforcement in my bill. The Law Enforcement Assistance Act already requires certain minimum standards and insists on a state plan for use of the funds. The bill merely says that if a state or unit of local government is to qualify for funds they must have a mechanism to guarantee every police officer's basic civil rights.

Related to this question is the Attorney General's primary objection: the bill would violate state's rights or be an intrusion into the activities of states and local units of government.

This argument probably sounds very familiar. It is the same argument used against the Civil Rights Acts. The fact is in the 1960s when the Congress saw that Constitutional rights were not being guaranteed to every American, it enacted laws that would cut off federal funds to a state until these rights were assured. On this authority, the federal government has ordered busing of children intra-city; ordered conformity with certain standards of education, instruction, staffing and attendance; and required local educational systems to spend money and do all sorts of things. No one will argue that the Civil Rights Act and many of the directives from the federal government that ensured were not important and worthwhile.

Why then is it so difficult to place a similar requirement on the states to assure the rights of law enforcement officers? Must these men conduct marches in the streets, engage in civil disobedience or conduct riots? Is violence the only force that will move Congress?

Perhaps we are seeing the demonstration of the police officer's frustration in the instances of brutality that occur. Perhaps the lack of motivation to perform his tasks well is based on a police officer's perception that he has no rights under the law so why bother enforcing someone else's?

The Justice Department's arguments are really weak. They readily admit that they believe "state and local law enforcement officers should be afforded many of the rights contemplated by my bill. They state further in their report.

"It should be noted, however, that the Department of Justice is not unmindful of this important area of law enforcement. We believe that there is a need for minimum standards with respect to police grievances and the investigation of police conduct. In fact the specific subject of rights of police officers will be addressed in the forthcoming report of the National Advisory Commission on Criminal Justice Standards and Goals."

Ah, yes. Let's study the problem—study it to death. The time for action is now. This Committee should not wait for some administration report on the problem. It is clear that there is an urgent need for enactment of this type of legislation. If the Justice Department wants to offer constructive suggestions for improving the bill, let them do so.

A major argument that appeared on the Floor was that this bill, if enacted, would require states and localities to alter their laws and ordinances to meet the provisions of the bill, and thus qualify for LEAA funds. This is true. I would remind the Committee that the states and localities were required to repeal their "Jim Crow" laws prohibiting blacks from obtaining full rights as citizens and states were required to enact voting rights laws that gave every citizen the opportunity to participate in the political process.

Others argued on the Floor last month that the bill's one-year phase-in period was too short since some state legislatures only met biennially. This is a valid criticism and calls for a change in the bill to make it effective two years from enactment.

Gentlemen, the time has come to assure every law enforcement officer that the Constitution protects his rights as a citizen as well. In all aspects of dealings with police officers whether administratively or otherwise, basic due process and other constitutional rights must be assured. I believe my bill does this without any undue hardship on the states. New York, for example, was among the first to draft such a bill of rights. My bill is based on the provisions of those regulations which have worked well over the last several years. A copy of that bill of rights will be included in my testimony as Appendix C.

Recently, in Memphis, Tennessee, the police association negotiated the inclusion of a law enforcement officers bill of rights in their operating contract. The Maryland House of Delegates passed a law enforcement officers bill of rights in the last session of that legislature. California has such a bill under consideration as well.

I urge the Committee to schedule further hearings to receive testimony from the many police organizations throughout the country on the cases that they have in their files. Let them speak out about the injustices they have experienced in their own police departments.

The time for enactment of this legislation is long overdue. I hope the members of this committee will share that view with me and report the bill to the floor as soon as possible. I thank the Committee for its time today and will be glad to answer any questions they may have.

APPENDIX A

LANDMAN v. ROYSTER

(Cite as 333 F. Supp. 621 (1971))

ROBERT J. LANDMAN ET AL. *v.* M. L. ROYSTER, ETC., ET AL.

(Civ. A. No. 170–69–R.)

United States District Court, E. D. Virginia, Richmond Division, Oct. 30, 1971

Class action wherein prisoners confined to state penal institutions sought declaratory and injunctive relief against individuals charged with powers and duties encompassing maintenance and supervision of state correctional system. The District Court, Merhige, J., held that injunctive relief would issue, where evidence adduced in respect to administration of discipline within prisons disclosed a disregard of constitutional guarantees of so grave a nature as to violate the most common notions of due process and humane treatment by certain of the defendants, their agents, servants and employees. It was further held that in order to discipline prisoners confined to state penal institutions, certain due process rights are necessary, namely, (1) decision to punish must be made by an impartial tribunal; (2) there must be a hearing, encompassing right to cross-examine adverse witnesses and present evidence in defense, including testimony of voluntary witnesses, preceded by notice in writing of substance of factual charge of misconduct; (3) ultimate decision must be based on evidence presented at hearing; and (4) prisoners intellectually unable to represent themselves must be permitted to select a lay advisor to present their case.

Order accordingly.

1. Courts 🔑284

Declaratory Judgment 🔑274

Jurisdiction of class action wherein prisoners of state penal institutions sought relief against individuals charged with powers and duties encompassing maintenance and supervision of state correctional system was acquired pursuant to jurisdictional and substantive civil rights statutes and under statute governing declaratory judgments. 28 U.S.C.A. §§ 1343(3, 4), 2201; 42 U.S.C.A. §§ 1981, 1983, 1985.

2. Constitutional Law 🔑272

Fact that some of matters which gave rise to punishments received by prisoner in state penitentiary may well have been factually accurate could in no way be used as an excuse for failure to accord prisoner due process prior to imposition of punishment. Code Va.1950, §§ 53–213, 53–214; 42 U.S.C.A. § 1983.

3. Civil Rights 🔑13

In class action wherein prisoners confined to state penal institutions sought relief against individuals charged with powers and duties encompassing maintenance and supervision of state correctional system, burden was on plaintiffs to prove their case by a preponderance of evidence. Code Va. 1950, §§ 53–213, 53–214; 42 U.S.C.A. § 1983.

4. Prisons 🔑13

Absent claims of gross violations of fundamental rights, federal courts will make no inquiry into manner in which state prison officials manage their charges. 42 U.S.C.A. § 1983.

5. Prisons 🔑13

Rule that lawful incarceration brings about necessary withdrawal or limitation of many privileges and rights is not to say that prisoners possess no further rights to be infringed or liberties to be taken, but, while confined, their fate is by law in hands of administrators whose acts, like those of most administrative decision makers, may be presumed legal. 42 U.S.C.A. § 1983.

6. Prisons 🔑13

Men who have been found guilty of violations of criminal laws may be utilized, so to speak, by society for ends related to general welfare, such as deterrence of similar acts by others and alteration of their own patterns of behavior. 42 U.S.C.A. § 1983.

7. Convicts 🔑1

Criminal activity, once proved by legal procedures, fairly works a forfeiture of any rights the curtailment of which may be necessary in pursuit of these ends, such as the right of privacy, association, travel, and choice of occupation. 42 U.S.C.A. § 1983.

8. Civil Rights 🔑13

Concerns of judicial efficiency must be among reasons which cause courts to pause in considering whether Congress intended federal civil rights jurisdiction to extend over claims of unfair treatment made by prisoners confined to state penal institutions. 42 U.S.C.A. § 1983.

9. Prisons 🔑4

Whether detention should be imposed at all has always been a matter for federal review and, in consequence, any substantial restriction upon access to a federal forum for examination of legality of confinement has been barred as well. 42 U.S.C.A. § 1983.

10. Prisons 🔑4

Federal courts may inquire into prison administrators' restriction of constitutional rights other than that of liberty itself. 42 U.S.C. § 1983.

11. Criminal Law 🔑977(i)

A valid state judgment in a criminal action affords no license to exceed its terms. 42 U.S.C.A. § 1983.

12. Prisons 🔑13

Although state law may authorize grant or withdrawal of certain benefits during incarceration, and state authorities may be taken, in sentencing, to contemplate the administration of their judgments in conformity with state law, still Federal Constitution circumscribes governmental power to withhold such benefits arbitrarily or discriminatorily. 42 U.S.C.A. § 1983.

13. Prisons 🔑13

Reasons of security may justify restrictive confinement, but that is not to say that such needs may be determined arbitrarily or without appropriate procedures. 42 U.S.C.A. § 1983.

14. Prisons 🔑13

Deprivations of benefits of various sorts may be used so long as they are related to some valid penal objectives and substantial deprivations are administered with due process. 42 U.S.C.A. § 1983.

15. Prisons 🔑13

Although security or rehabilitation are not shibboleths to justify any treatment, when it is asserted that certain disabilities must be imposed to these ends, courts may still inquire as to actuality of a relation between means and end, but test of necessity will be more stringent when a deprivation of a fundamental constitutional right is involved. 42 U.S.C.A. 1983.

16. Civil Rights 🔑12

When constitutional violations of which state prisoners complained were not isolated deviations from normal practice but rather indicated traditional procedures in state penal system, it was court's duty not solely to amend so far as possible the defaults of the past but to prevent their likely recurrence in the future. 42 U.S.C.A. § 1983.

17. Criminal Law 🔑1213

Just as cruel and unusual punishment clause restrains judiciary and legislature, so it also limits discretion of administrators. U.S.C.A. Const. Amend. 8.

18. Criminal Law 🔑1213

In an obvious sense any term of incarceration, with all of its incidents, constitutes a penalty, and purposes of Eighth Amendment might best be served by treating preliminary issue as to whether a practice constitutes a punishment as thus resolved, and any treatment imposed upon convict would then be tested by cruel and unusual standard. U.S.C.A. Const. Amend. 8.

19. Criminal Law 🔑1213

As a technique designed to break a man's spirit not just by denial of physical comforts but of necessities, to the end that his powers of resistance diminish, imposition of a bread and water diet providing a daily intake of only 700 calories, compared with an average need of 2000 calories or more to maintain continued health, is inconsistent with correct minimum standards of respect for human dignity and is violative of Eighth Amendment. 42 U.S.C.A. § 1938; U.S. C.A.Const. Amend. 8.

20. Criminal Law 🔑 1213

To restrain or control misbehavior by placing an inmate in chains or handcuffs in a cell is unconstitutionally excessive, notwithstanding claim that inmate must be kept from injuring himself or others, escaping, or destroying things of value. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

21. Criminal Law 🔑 1213

Practice of taking clothing of inmates while in solitary and keeping them in unheated cells with open windows in winter works to degrade an inmate by denying him any of sources of human dignity, imperils his health, and constitutes cruel and unusual punishment. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

22. Prisons 🔑 13

An inmate may be kept nude in his cell only when a doctor states in writing that inmate's health will not thereby be affected and that inmate presents a substantial risk of injuring himself if given garments. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

23. Injunction 🔑 75

Although, in respect to prisoners confined to state penal institutions, instances of chaining, denial of clothing, and exposure to cold had, on evidence, not been everyday occurrences, and although new regulations purported to outlaw some of such practices, where punishments of such sort had been inflicted in past by guards acting alone, and where administrators had not been in complete control of their subordinates, injunctive relief restraining use of such practices would be granted. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

24. Criminal Law 🔑 1213

Depriving prisoners confined to solitary confinement in state institutions of their mattresses and blankets as punishment for misconduct was not cruel and unusual punishment, although undoubtedly harsh, where there was no evidence that it had a substantial effect upon anyone's health, assuming cells were otherwise clean and well heated. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

25. Criminal Law 🔑 1213

Practice of crowding several inmates confined to state penal institutions into a single "solitary" cell constituted cruel and unusual punishment. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

26. Injunction 🔑 75

In view of state penal system's past difficulties in securing compliance with its regulations at lower administrative levels, federal district court would enjoin extended, unnecessary confinement in solitary cells of more men than cells were meant to hold. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

27. Prisons 🔑 13

Use of tear gas to physically disable an inmate who poses no present physical threat constitutes a form of corporal punishment, the use of which in such a situation is generally disapproved. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8

28. Prisons 🔑 13

If chaining a man to his bars, punishing him with a strap, and other corporal punishment should be enjoined, there is no principal distinction which would permit use of tear gas to punish or control nonthreatening inmates. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

29. Injunction 🔑 75

Fact that some inmates confined to state penal institutions were not permitted to shower during extended stays in solitary was not a basis for granting injunctive relief, where there was no proof that at such times they were also denied necessary sanitary items so that they might wash in their cells. 42 U.S.C.A. § 1983; U.S.C.A.Const. Amend. 8.

30. Habeas Corpus 🔑25.2(4), 45.3(1)
Injunction 🔑94

Prevailing precedent in Third Circuit permits claims that good behavior time has been arbitrarily denied, and that injunctive relief is therefore owing, to be litigated in civil rights actions, and disapproves use of habeas corpus, accompanied by exhaustion of remedy requirement. Code Va. 190, §§ 53–213, 53–214; 28 U.S.C.A. § 2254(a); 42 U.S.C.A. § 1983.

31. Civil Rights 🔑13

Federal district court could consider claim of unlawful denial of good-time credit made by state prisoners in civil rights action prior to exhaustion of state court remedies for habeas corpus. Code Va. 1950, §§ 53–213, 53–214; 28 U.S.C.A., § 2254(a); 42 U.S.C.A. § 1983.

32. Constitutional Law 🔑272

Whether certain procedural prerequisites are required before interprison discipline is imposed is governed by conventional due process standards, adapted as may be necessary to prison environment, and argument that right to be free of substantial restraints of solitary confinement, "padlock," or maximum security segregation or to earn statutory "good time" are matters of mere legislative or administrative grace fails in face of current constitutional doctrine. Code Va. 1950, §§ 53–213, 53–214; 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

33. Prisons 🔑13

To say that individual rights may be sacrificed to custodial or rehabilitative necessity is not to state that courts will not inquire as to need for such sacrifices and reality of claimed benefits. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

34. Constitutional Law 🔑272

In order to discipline prisoners confined to state penal institutions, certain due process rights are necessary, namely, (1) decision to punish must be made by an impartial tribunal; (2) there must be a hearing, encompassing right to cross-examine adverse witnesses and present evidence in defense, including testimony of voluntary witnesses, preceded by notice in writing of substance of factual charge of misconduct; (3) ultimate decision must be based on evidence presented at hearing; and (4) prisoners intellectually unable to represent themselves must be permitted to select a lay advisor to present their case. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

35. Prisons 🔑13

Although district court will not require an appellant procedure with respect to notice and hearing given prisoners in state penal institutions prior to imposition of discipline, if higher authorities than disciplinary committee feel duty bound to reexamine decisions, their review must be restricted to charge made and evidence presented, and practice of going outside of record in search of bases for punishment must cease. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

36. Prisons 🔑13

Where substantial sanctions are possible in proceedings to discipline prisoners confined to state penal institutions and *assistance of counsel may be of benefit*, retained counsel is necessary to protect fact-finding and adjudication process, unless there is shown some compelling government interest in summary adjudication, and prisoner who desires to secure counsel for hearing may be required to notify committee of that fact, and postponement of hearing to secure counsel may reasonably be limited to four days. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

37. Prisons 🔑13

Existence of some reasonably definite rule is a prerequisite to prison discipline of any substantial sort, and regulations must, in addition, be distributed, posted, or otherwise made available in writing to inmates. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

38. Prisons 🔑13

"Misbehavior" or "misconduct," for which prisoners confined to state penal institutions were penalized, offered no reasonable guidance to inmate, but left administrator irresponsible to any standard, and was not a proper ground on which to impose penalties 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

39. Prisons 🔑13

Ban on "agitation" at once gives no fair warning that certain conduct is punishable and, in practice, includes rendition of legal advice and preparation of legal pleadings, protected activities; agitation may not be used by state penal institutions as a basis for imposing discipline on prisoners 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

40. Prisons 🔑13

Offenses of insolence, harassment, and insubordination, directed against custodial or administrative personnel of state penal institutions, are not unduly vague and may be used as a basis for imposing discipline on prisoners. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

41. Prisons 🔑 13

Whereas prison officials may reasonably regulate preparation of legal pleadings in service of valid state interests, they may not prohibit or punish inmates for conducting ligigation of their own or for rendering assistance to other inmates, in absence of any other adequate source of legal aid. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

42. Prisons 🔑4

Right of prisoners to conduct litigation of their own or render assistance to other inmates, in absence of any other adequate source of legal aid, extends to prisoners desiring to sue under Civil Rights Acts, as well as corollary right to communicate for purposes of enlisting an attorney's aid. 42 U.S.C.A. § 1983.

43. Constitutional Law 🔑90

Interruption of mail to public officials infringes upon First Amendment rights of prisoners and likewise rights of legislators to be informed. U.S.C.A. Const. Amend. 1.

44. Prisons 🔑4

State's executive arm had no interest in keeping whatever information state penitentiary inmates may have had out of hands of lawmakers, and injunction would issue to restrain attempts of state penal institutions to prevent prisoners from communicating with state legislators. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 1.

45. Civil Rights 🔑1

District court would direct that all good time lost by prisoners confined to state penal institutions as a result of hearings conducted without compliance with required standards be restored, with leave to retry those punished within a reasonable time; those confined in padlocked or solitary cells were also to be released, subject to retrial, but men reasonably thought dangerous could be detained apart from general prison population pending their hearings. Code Va. 1950, §§ 53–213, 53–214; U.S.C.A. Const. Amend. 8.

46. Prisons 🔑13

Rehabilitative treatment constitutes no talismanic state interest which will justify any exactions from individual prisoners. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend. 8.

Philip J. Hirschkop, Alexandria, Va., for plaintiffs

Andrew P. Miller, Atty. Gen. of Va., G. R. Humrickhouse, Richmond, Va., for defendants

Memorandum

MERHIGE, District Judge.

[1] This class action by prisoners of the Virginia Penal System is brought against defendants charged with the powers and duties encompassing the maintenance and supervision of the correctional system of the Commonwealth of Virginia. The jurisdiction of the Court is acquired pursuant to 28 U.S.C. §§ 1343(3), (4), 2201, and 42 U.S.C. §§ 1981, 1983, 1985.

Defendants named in the complaint, or their successors, are the Director of the Department of Welfare and Institutions, the Director of Division of Corrections, the Superintendent of the State Penitentiary, and the Superintendent of the State Farm.

Plaintiffs, who are representative of the class they purport to represent, mount their attack upon the administration of discipline within the prisons: the reasons for invoking sanctions, the adjudication process, and the various penalties imposed. The evidence adduced has disclosed as to each of these points a disregard of constitutional guaranties of so grave a nature as to violate the most common notions of due process and humane treatment by certain of the defendants, their agents, servants and employees.

One of the principal issues before the Court has to do with lack of appropriate due process prior to punishing members of the class for supposed infraction of rules. As the Court has already indicated, it finds that in many instances punishment has been of such a nature as to be abusive and violative of the most generic elements of due process and humane treatment.

Of necessity the Court must herein set out an extensive review of the testimony to illustrate the existence of what the Court finds to have been a consistent course of conduct by prison administrators and those beneath them, resulting in the denial of the fundamental elements of due process.

A prefatory remark is due on a point of terminology. The good conduct allowance—"good time"—is a credit of ten days against one's sentence for each twenty days served without a rule infraction. Va. Code § 53–213 (Supp. 1970). The Director of the Department of Welfare and Institutions is empowered to impose forfeitures and restorations of accumulated good time. Va. Code § 53–214 (1967 Repl. Vol.).

"C-cell" inmates at the Virginia State Penitentiary and occupants of other "segregation" units there and at the Virginia State Farm enjoy substantially fewer privileges than men among the general population. Prisoners in C-cell cannot be employed in any work program; thus they are denied the opportunity to earn money. A reduced diet—two meals a day—is served. Religious services and educational classwork are unavailable, although men may be visited by a chaplain. There is no access to a library, although the men can receive magazines (under a recent change in rules) and books. The likelihood of release on parole is almost nonexistent for men placed in C-cell, and in practice there is no chance that lost good time will be restored. In addition, showers are permitted only at weekly intervals instead of daily, and men in some segregation units are unable to exercise outdoors.

In the Virginia penal system there are five major units and about thirty smaller correctional field units. About 1,100 inmates, all felons, are housed in the maximum security Virginia State Penitentiary, located in the City of Richmond. The Virginia State Farm, a medium security facility, holds about 1,200. The Virginia Industrial Farm for Women contains about 300 inmates. Southhampton and Bland Correctional Farms each hold about 450. The combined Correctional Field Units, minimum security institutions, hold some 2,200 inmates. There are about 30 of these "road camps"; the permanent ones house about 80 to 90 men, and the semi-permanent units contain 50 to 60.

The volume of testimony concerning rules generally covering sanctions and their application in specific instances is immense. Even allowing for the changes in policy which no doubt took place over the time period—over two years—embraced by the deposition and ore tenus evidence presented, the Court has observed a disturbing number of inconsistencies in the officials' accounts of applicable rules. These factfindings must be read, and compared with the evidence, with the awareness that when it is said that a given disciplinary procedure is followed, the Court is speaking of theory and not necessarily practice, and, at that, theory as expressed by the most apparently authoritative individual.

There was at the time the Court heard this case no general, central set of regulations for the penal system stating which offenses justify the taking of a prisoner's good time or his commitment to a solitary cell.

As of July, 1970, according to depositions then taken, the Superintendent of the Virginia State Penitentiary was empowered to take a man's good time in any amount on the recommendation of a disciplinary committee. No guidelines exist for the penitentiary fixing the range of penalties available for particular infractions. Men in C-cell maximum security section seem generally to be ineligible for restoration of good time. For men among the general population there is a rule of thumb that good time cannot be restored unless a man has served at least twelve months without an offense.

The disciplinary committee does not call as a witness the guard who reported an offense. Needless to say, cross-examination is therefore impossible. No written charges are served on the prisoner before or after the proceedings, and lawyers may not participate. The committee does not make factfindings. No formal appeal procedure exists.

The Disciplinary Committee jurisdiction, in late 1970, was extended to cover offenses committed in C-cell. It now, therefore, generally hears as well any charge that may result in solitary confinement. The question whether a man should be placed in C-cell in the first instance, however, is not always determined by a disciplinary committee hearing. This decision may be made by the Superintendent alone.

Once he is in C-cell, a man's release to less rigorous quarters may be gained by means of a recommendation to W. K. Cunningham, Jr., Director of the Division of Corrections, by a committee composed of the Penitentiary Superintendent, Assistant Superintendent, and two high guard officers.

As of July, 1970, a C-cell inmate could be moved by a guard into meditation without a hearing. Only the Superintendent or Assistant Superintendent could order the man's release. A guard could request leave to keep a man in solitary for more than 30 days, in which event a written report by the guard was to be passed on to Cunningham who, on the basis of the report, would approve or disapprove the request. The meditation cells measure about 6½ feet by 10 feet and contain a mattress (at night), a sink and commode. The usual C-cell diet is served, although bread and water is reserved as a selective form of additional punishment. A man may also be denied use of his mattress for up to about three days as a form of penalty, in which case he sleeps on the bare cement with a blanket.

If a penitentiary prisoner is continually obstreperous in solitary, there is no further method used to control him other than by chaining or tear gassing. On occasion a man's clothing may be taken if he appears to be a suicide risk or a menace to others.

Transfers from the general population to C-cell, since at least 1969, were in theory made only on the recommendation of the disciplinary committee to the Superintendent. Peyton, the Superintendent in February of that year, said, however, that such a transfer, made solely on the recommendation of the Assistant Superintendent, would not necessarily violate regulations. It was his practice, he said, to interview all prisoners in C-cell every six months to determine whether a return to general population was indicated. Criteria determining the decision to place a man in C-cell or remove him were extremely hazy. A man's attitude, his disruptiveness, tendency to challenge authority, or nonconforming behavior, as reflected in written or oral guards' reports, may condemn him to maximum security for many years.

In 1969 C-cell inmates' offenses for which good time might be lost were "tried" usually by the Assistant Superintendent on the record of a guard officer's report.

In the penitentiary the B-basement category of punitive segregation was instituted in September of 1968. Superintendent Payton himself selected the inmates who were to be placed there. Conditions there were substantially as in C-Building, but somewhat more restrictive. For several months, for example, B-basement inmates were not permitted outdoors for exercise.

Isolation of prisoners in maximum security cells of this sort has often been effected without any formalities. No investigation was made into Leroy Mason's responsibility for a prison work stoppage, yet for that reason, apparently, he was placed in C-cell for nearly two years. As a matter of practice no hearings were held, according to Oliver, when he was at the Penitentiary, on the question of transfers into C-cell, and inmates were held there at the discretion of himself and the then superintendent, Peyton. Generally speaking these two administrators relied exclusively upon written reports submitted by the guards in retaining men such as Mason, Landman, Hood, and Arey in maximum security units. Elaboration as to the Court's findings as to each of these men will be set forth in later paragraphs.

The Assistant Superintendent at the Penitentiary may "padlock" a man without any hearing for any length of time.

In the penitentiary it appears that several disciplinary sanctions are imposed by guards acting alone, or with the permission of the officer in charge. Meditation prisoners lose their mattresses for misconduct, for example. Mechanical restraints such as chains, tape, and handcuffs are placed on rambunctious inmates by guards. At least once an inmate was taken directly to meditation from death row by a guard captain. Several times fines have been imposed by guards. Furthermore, one Captain Baker has both charged inmates with offenses and sat on disciplinary committees which sentenced them to meditation.

Superintendent R. M. Oliver described the punishment procedures which prevailed at the Virginia State Farm in December of 1970.

There are 32 solitary cells at the southside part of the State Farm, and 16 at northside. Permissible punishment, without special authorization by the Director of the Division of Corrections, is 30 days' confinement. Prisoners are given a mattress at night only; during the day they sit on the floor or on the toilet bowl. Two meals per day are served. It is standard fare, save that no beverage, dessert, or second helpings are provided. Prisoners in solitary cells could not initiate legal proceedings nor answer any letters save those concerning pending proceedings or family crises.

Confinement under this regimen is directed only a disciplinary committee composed of a guard lieutenant, Assistant Superintendent Jackson, a guard captain, and Mr. R. O. Bennett. The group meets as soon as possible after the offense, preferably within 24 hours. Mr. Oliver stated that he would object to assistance by lawyers at such hearings and likewise to lay counsel's presence as encouraging excessive "hassling." He would not object to using written charges in cases of serious offenses but saw no need for written factfindings.

At the State Farm a prisoner may be taken by a guard directly to a solitary cell if he is incessantly disruptive. In any case, however, a hearing by disciplinary committee is held within 24 hours of the alleged offense. At least since February of 1969, a committee has met on questions of good time loss, which they might recommend to the superintendent, and transfer to maximum security.

Confinement to maximum security areas at the State Farm (formerly C–5 now M Building) entails a reduced diet, rationalized on the basis that the inmate is not working, weekly showers only, and no outdoor exercise.

At the State Farm, testified Assistant Superintendent Jackson, no prisoner would be confined to meditation without a hearing before himself. Once at least, he said, he placed a prisoner in meditation not for violation of any regulation but because he was mentally incapable of abiding by rules governing life in the general population.

Solitary confinement cells at the State Farm are similar to those at the Penitentiary. The bread and water regimen is now very rarely used, and meditation inmates have not in recent years been deprived of clothing as a type of punishment. Both of these sanctions, however, are held in reserve.

Current practice on good time loss is for the disciplinary committee to forward its recommendation that a man lose good time to the Superintendent. That officer almost invariably approves the recommendation and determines, all on the basis of written reports, by how much time a man's sentence should be lengthened. No specific guidelines prescribing penalties for various offenses exist.

The Assistant Superintendent of the Virginia State Farm may place a man in confinement in his own cell—"padlocked"—without a hearing. This is usually done on a guard officer's recommendation. There is no maximum-term.

As of July 1970, the Superintendent of one Field Unit had four men in solitary for various offenses, such as general "misbehavior." While this witness' testimony was to some extent inconsistent and contradictory, the Court concludes that men at this particular Field Unit have been jailed summarily, without a hearing, on the authority of either the Superintendent or a guard. Such solitary confinement has been for an indeterminate period in the sense that as of the time of the taking of evidence in this case the witness could not say for how long those then in solitary would be so confined. In at least one instance a hearing of sorts was held in the Superintendent's office in which one of the men who sat in judgment of the accused prisoner was the guard who had accused him.

This witness also said that no particular standards governed his requests that good time be taken. No hearings are held at which the men are allowed to disprove the information on the basis of which good time loss is recommended.

In 1969, one Reynolds, Superintendent of Field Unit No. 9, stated that he permitted men in meditation to write an attorney whenever they wished, even when held in isolation cells. Whenever an offense meriting taking good time was involved, he said, he would call the inmate accused before him; he did not mention that a formal hearing was requisite.

At Bland Correctional Farm, disciplinary proceedings are conducted by a committee including the Superintendent, Assistant Superintendent, and a captain of the custodial force. Good time forfeiture is often haphazardly administered. After one incident including a sitdown strike involving several inmates, the Superintendent docked several participants all their good time, despite that some had accumulated far more than others, and even though in professed theory the amount forfeited is related to the gravity of the offense. At the hearings inmates were not informed of their right to present evidence by witnesses.

The Superintendent of Unit 7 confirmed that on one cold day when several inmates declined to work, some were given the choice of road work or solitary confinement. One Wade Thompson was sent to solitary. A prisoner named Melton, who the witness felt had instigated or agitated the strike, was also sent to solitary. No firm evidence lay behind this finding of "agitation" by Melton. Nevertheless the man was kept in jail and put on a diet of bread and water for two days out of three because the administrators disapproved of his "attitude." Although permission is nominally required for extended "jail" terms and bread and water, Blankenship, the Superintendent, did not secure this before the extra sanctions were imposed.

Good time also was taken. This witness stated that he had never held a formal hearing of any sort on restoring lost good time, and the Court so finds.

Good time administration in the field units is in the control of D. P. Edwards, Superintendent of the Bureau of Correctional Field Units, who acts on the basis of written reports and recommendations by the disciplinary courts in the various field units. A guard is often one member of the court panel, although theoretically not the man who reported a violation. Procedure is not fixed by written rules, but the practice prescribed for field units does not provide for a written notice of charges but does allow some cross-examination and the presentation of a defense. This code of practice is passed on by word of mouth to camp superintendents at regular meetings.

A man at a field unit who claims to be ill will be taken to a doctor at his request; there is, however, no provision for regular visits by doctors to some units, much less to men in solitary. There are no medical staffs at any field units.

A prisoner who escapes, or attempts to escape, is automatically docked all accrued good time when he is recaptured, whether or not he is tried and convicted, and he is not considered eligible for restoration of that credit. When a prisoner is put in solitary he some times stops accruing good time and some times does not, depending on the administrator's view of his attitude.

Certain principles with respect to discipline apply throughout the Virginia Penal System in theory. There have been, however, no general rules which establish those offenses for which commitment to solitary confinement or the taking of good time may be imposed.

Confinement in meditation is ordered by the institution superintendent or assistant superintendent after a hearing. One of these officials and one or more of his subordinates hear the case. In theory the complaining officer presents his charge in the inmate's presence, and then the presiding hearing officer asks the convict to make a defense or explanation. The prisoner may then depart while the disciplinary committee discusses the case. Subsequently a decision is announced.

The prisoner about to be tried is not given a written notice of the charge he faces. Only custodial personnel sit on the disciplinary boards. No explicit recognition of the prisoner's right to cross-examine exists. After the hearing no written factfindings are made or given to the prisoner. No particular process for appellate review exists, although one can complain by letter to higher officials.

Before his hearing an inmate, if considered violent, may be held in a detention lockup on a guard's authority, but in theory no guard may commit a man to meditation. Nor does an accusing guard sit on the adjudicatory panel.

No lawyer or lay assistant is permitted to represent or advise an accused prisoner. These rules also govern proceedings resulting in a recommendation to deny good time. There are no procedures set up to review requests to restore good time.

Until very recently, an inmate in solitary confinement was subject to almost total restriction of his correspondence privileges. On entering meditation he might send a form letter to his family explaining his status and that he could not correspond or receive visitors. The man could receive mail from an attorney, however, and correspond with counsel concerning pending litigation only. He could not file suit.

Meditation cells are equipped with a mattress at night only. No man in theory is fed on a bread and water diet save with the permission of the Director of the Division of Corrections. A doctor's approval is not required, however, and this practice is authorized on the basis of brief written requests. A man in meditation is alone, save when overcrowding requires the placement of more than one man in an isolation cell. The only reading matter is a Bible.

The use of further restraints such as chaining or gagging is not covered by regulation, but is left to the discretion of the unit superintendent. Cells almost uniformly are equipped with a sink and a commode. No specific regulation allows inmates to have a toothbrush, toilet paper, soap, and so forth. Most are given a towel. They are permitted to shower and shave once a week only. A doctor does not regularly visit men in solitary cells. In the penitentiary a man will be examined by a doctor only if the male nurse—a former military medical corpsman or man of equivalent training—recommends that he be taken to the hospital.

W. K. Cunningham, the Director, testified that no intelligible guidelines govern the taking of good time, save that escapes and escape attempts always result in full forfeiture. He could not recall any instance of his overruling a superintendent's decision to take good time. Field Unit superintendents forward their recommendations to Mr. Edwards, the overall superintendent of field units; he usually follows their lead. The individual unit superintendents are for the most part former guards who worked up through the ranks, and not all are high school graduates; in fact a majority are not.

The great majority of prisoners have lost good time restored to them, according to Cunningham; nonetheless he testified that in the last eight months of 1970 only one penitentiary inmate received such grace.

Disciplinary boards have at times included the accusing guard. Furthermore, although representation by another is forbidden, the Director testified that some inmates are so very dull mentally that they probably cannot properly present their case.

Good time has been taken in amounts at least as large as one year on the basis of the briefest of guards' reports. Maximum security confinement has often been imposed out of unsubstantiated fear, suspicion, or rumor. In some cases this form of detention has been used for prisoners who were simply too feeble minded to adhere to the usual prison routine.

On October 1, 1970, less than two months before trial on this case, Division Guideline 800 was put into effect. These regulations, as adapted to cover all institutions, govern inmate discipline. They are set out in full in a footnote. These were the first substantive regulations on the subject put into effect in the Virginia penal system.

The new guidelines require a three to five member "adjustment committee" composed "normally" of department heads or their assistants. A counselor—a social worker assigned to one of the large institutions—may be present if one of his charges is accused.

There is provision for notice of charges to the inmate, although not in writing. The inmate is put in "detention" pending hearing, which takes place within 48 hours. There is some vague provision for witnesses and cross-examination, at the discretion of the committee chairman. The result of the hearing is recorded and transmitted to the Superintendent for "review and approval;" whether that officer can reverse a not guilty verdict is unclear.

The new regulations do not forbid a charging officer from sitting in judgment. Presumably this practice will be disapproved in theory, as in the past. In practice, however, an accusing official has sat on the panel; Assistant Superintendent H. P. Jackson of the State Farm has done so numerous times.

Offenses are described only as major or minor misconduct. There is no apparent restriction on available penalties, save that corporal punishment is outlawed, and described "minor" penalties can be imposed by a guard supervisor, with appeal to the committee.

The guidelines place conditions on the use of solitary confinement cells. Normal practice will be to permit an inmate to keep his usual clothing. The cells are to be lighted and heated, and occupants receive something to sit on in the daytime. Mail is not substantially curtailed, and "jail" terms are limited to 15 days. However, a "supervisory officer" may direct the removal of all furnishings and clothing from the cell if the inmate is "destructive," and a man can be kept in isolation longer than 15 days at the order of the Director. Alternatively, he may be placed in a maximum security cell "until he can, with reasonable safety, be returned to the general population."

Forfeiture of good time is imposed on the recommendation of the adjustment committee to the institutional superintendent. That official withholds his decision for seven days while the inmate presents his case to him in writing. There is no procedure established to cover the restoration of lost good time, although the discipline board may "set new behavioral goals * * * and offer restoration of good time." Final authority to restore credit, however, seems to rest in the superintendent, as it did previously.

Procedure for transfer to maximum security facilities is not established, although there is provision for a "formal review" every 120 days of each inmate's "behavior and attitude."

Finally there is a saving provision reserving full authority over disciplinary matters in the Director.

Copies of these regulations were not sent to inmates.

The rules do not seek to define offenses. As before, inmates may be penalized for "abusive language," a term particularly vague in its content in the prison milieu, where the norms of polite conversation do not prevail. Whether language is "abusive," according to Cunningham, depends a great deal on the tone of voice or manner in which words are spoken. In the past, nevertheless, men have been punished for "abusive language" on the basis of written guards' reports which sometimes did not even report the words spoken.

"Insubordination," "insolence," and "sarcasm," likewise offenses, are also undefined: their substance is left to the judgment of administrators. A superintendent also may penalize men for "poor work" and "disrespect" if their conduct is such, in his opinion.

Whether a man has in fact attempted to escape or has escaped will be left to the determination of the adjustment board and the superintendent, as before.

"Agitation" is also undefined. Cunningham states that it consists of influencing others to do illegal things, or acts which would be disturbing to the institution. Guards' reports, however, occasionally give no specifics as to the acts constituting "agitation."

No maximum time of padlock confinement is fixed by the new rules. Cunningham stated that the decision to padlock a man must be made by an official of the office of Assistant Superintendent or higher, but the "minor misconduct" provision appears to allow the chief guard officer to impose this penality.

The guidelines make no reference to the practice of imposing fines. In the past this has been done summarily by guard officers.

Maximum and minimum amounts of good time that can be taken for various offenses are not set forth. As before, these will be governed, under guideline 800, by patterns and rules of thumb passed on orally. Moreover in practice a superintendent's decision to take or restore good time will not be effectively appealable. At most correctional field units this means that the ruling will be made by a man without a high school education or any special training in the goals and techniques of penology.

Guideline 800 also authorizes a continuation of the practice of confining mental defectives in the maximum security segregation cells. The inmates Elbe and Gonzales were referred to C–5 segregation at the State Farm for the offense of having insufficient mentality to participate in ordinary prison business. This is still authorized for those who "cannot safely function in the regular inmate population."

Regular appeal procedures are not established. In the past prisoners aggrieved by decisions against them have been able to "appeal" to the institution superintendent or the Director, by writing a letter. Review, however, has been highly informal, and the Director has not hesitated to go outside the record to secure information on a man's behavior both in the incident in issue and in the past Never, however, has he reversed a superintendent's decision to take good time.

The Court finds that the reserved powers clause would retain for Cunningham the power to take good time without a committee hearing, to place someone in a solitary cell without a statement of reasons, and to keep a man in maximum security indefinitely on his sole order. Despite that according to Guideline 800 a normal diet is served in isolation, the director may still nonetheless impose a bread and water menu. Moreover, even the adjustment committee may extend a man's term in "jail" if it finds that he committed a second offense during his first fifteen-day term.

Cunningham had formed no fixed opinion on whether counsel should be admitted to the disciplinary committee hearings. He thought that lawyers might be unfamiliar with the goals and means of penology, even by comparison with some of the guards. The director had no objection to the presense of lay counsel, however.

Going to the Court's findings concerning not only the named plaintiffs but others of the class, the Court makes the following additional factual findings:

ROBERT JEWELL LANDMAN

Landman, a prisoner now released from the Virginia system after having served his full term on August 28, 1970, had been technically eligible for parole for six years prior to his release.

Commencing in 1964, Landman embarked upon a career, well-known to this Court, as a writ-writer. The evidence before the Court is that between that time and the time of his release, on behalf of himself he filed a minimum of 20 suits, and it is estimated that in addition he assisted fellow inmates in approximately 2,000 other petitions.

Landman's troubles with the prison authorities apparently commenced with his having written a letter to one of the local newspapers, for which he served 20 days in solitary confinement. This was followed with correspondence to the then Governor, and in 1964 he was sent to what is known as the "C" Building and placed in punitive segregation where he was held for a period of 150 days. He was removed from there and put in the general population until January 1965 when he was moved to a prison camp. His move from the penitentiary to the camp came the day before he was due to confer with a local attorney.

His reassignment to the penitentiary from the camp undoubtedly came about by reason of his having by then commenced his writ-writing endeavors, and in May 1965 it was recommended that he be placed in the "C" Building for his efforts in that regard. In "C" Building his life appears to have been a series of transfers to and from solitary confinement. In at least one instance he was put in solitary confinement for 58 days and never given any reason whatsoever for this confinement.

Apparently for assisting another prisoner in preparing a writ in 1966, he was once again put in solitary confinement.

This Court finds that up to November 1966, the man was punished 16 times and had good time taken from him once. He served a total of 266 days in solitary confinement and 743 days on padlock.

In August of 1968, this Court entered a consent injunction enjoining the prison officials from denying inmates of the Virginia State Penitentiary certain of their rights. The day following the injunction, Landman was once again put in solitary confinement for a period of 40 days, allegedly for conferring with another prisoner. Landman's attempts to contact his lawyer were to no avail. From March 15, 1969, to July, Landman was placed on what is known as "padlock," wherein a padlock is placed on a particular cell so that when all other cells are opened electronically, that particular cell remains closed.

In short, the Court finds that there was imposed upon Landman over 265 days of solitary confinement and in no instance did he receive even the rudimentary elements of a hearing or opportunity to defend any allegations made against him. The Court is satisfied that Landman's exercise of his right to file petitions with the courts, and his assisting other prisoners in so doing, were the primary reasons for the punishments put upon him.

CALVIN M. AREY

Arey was placed in solitary confinement on December 6, 1965. Although the record is devoid of any accounts of violence on the part of Arey, he had with justification been considered an escape risk and remained in "C" Building for a period of more than 4¼ years until released into the general population in July 1970. At least twice while in maximum security he was placed in solitary confinement, one of the times for allegedly discussing with Landman an order of this Court, and he, like Landman, was transferred to solitary confinement for a period of 42 days during which time neither of them was permitted to file legal pleadings or to send letters to courts or attorneys; and in one instance he was placed in solitary confinement for reading to inmates a letter that he had received from a state senator. No notice or hearing of any kind was held in regard to these punishments, nor in regard to his loss of good time which he sustained. It would appear from the evidence that Arey's good time was taken on the basis of information received from a guard and upon the recommendation of the Assistant Superintendent that his good time be taken. Not even the rudimentary elementary elements of a hearing or opportunity to be heard was given this man prior to the taking of good time.

[2] The fact that some of the matters which rise to the many punishments received by Arey may well have been factually accurate can in no way be used as an excuse for the failure to accord him due process.

The record abounds with evidence of Arey's attempts to communicate with attorneys, only to be subjected to delay or frustration. In at least one instance Arey was forbidden by the Superintendent to communicate with an attorney who was not then currently representing him. Perhaps the most striking example of the indignities suffered by Arey is exemplified by an incident which occurred on August 13, 1968. On that day radio news reports gave an account of this Court's injunction against the employment of certain methods of punishment in the state prisons. According to punishment reports submitted by guards, Arey yelled to other inmates concerning the Court order, telling the population of "C" Building generally that tear gas and the taking of bedding had been prohibited. Arey's commitment to solitary for this was approved by Superintendent Peyton who, so far as the evidence before this Court shows, failed to check out the account of the occurrence with anyone who had been allegedly present. The prison records as to this incident show the spaces on the form designed to record the members of the disciplinary panel who heard the case to be blank. Obviously no hearing was held. In fact it was standard practice at that time, the Court finds, to discipline men in C-cell without any hearing. On occasion, according to the testimony of R. M. Oliver, a committee might sometimes be used.

Arey was released from his isolation on September 23rd. That same day he found on his cell cot a letter he had tried to send to an attorney on August 14th; permission to mail it had been refused. He, of course, had been denied leave to write counsel during his solitary confinement.

The record shows that a letter went from Superintendent Peyton going to Director Cunningham, which indicates as well that copies of this Court's order mailed by an attorney to certain prisoners were intercepted apparently on instructions of an Assistant Attorney General.

It was three days after his release from meditation, where he had not been allowed to shave, brush his teeth or comb his hair, and after having been on a bread and water diet for two days out of three while incarcerated in a cell which contained only a sink and a commode, and, in the night, a mattress and two blankets, that he wrote a letter to a state senator which ultimately was returned to him without having been mailed. The letter, which concerned penitentiary conditions, was taken to R. M. Oliver who disapproved this correspondence. No satisfactory explanation for this action has ever been received.

In 1969 Arey received a copy of a letter from a state senator which he read aloud to another inmate. While there is some dispute over how loud he spoke and what extemporaneous remarks he added, as a consequence a guard filed a punishment report. While no hearing was held, Arey lost all accumulated good time and stayed in meditation until February 5, 1970. The effect of the loss of good time was to extend his term by a year and eleven days.

Arey was kept in C-cell through 1969 and well into 1970. In early 1969 no concrete reason could be given by Peyton as to why Arey was still in maximum security. At least one official testified that it was principally on account of his alleged disruptive, contentious attitude. The same official, however, in conversation with the state senator who visited the prison, stated that Arey's litigiousness was at least a contributing cause for the resolve to keep him in C-cell.

In mid-1969, after J. D. Cox succeeded Peyton as Superintendent, a four-man review committee for the penitentiary recommended to W. K. Cunningham that Arey, Leroy Mason and several others be returned to the general population from C-cell. Cunningham rejected this proposal, and the men were kept in segregation for many more months.

ROY E. HOOD

Hood had been in the penal system continuously since 1963 and in at least two instances escaped from road camps and undoubtedly has admittedly caused difficulty, in some instances, during his stay, although in at least one instance he had been made a trusty. Some of the punishment accorded Hood, such as allegedly for refusal to work, fails to show up on the records kept by the authorities.

While in most instances Hood knew of the reason for a particular punishment, the Court finds that he has been put in "the hole", or solitary confinement, in some instances without benefit of any opportunity to be heard as to whether the punishment was either deserved or appropriate. He has lost good time under the same circumstances.

From January 1967 to November 1968 this particular prisoner was apparently devoid of any particular problems until he conferred with an attorney, and within eight days thereafter he was transferred to the penitentiary. Interestingly enough, the attorney with whom he had conferred was the same attorney who was representing the inmates in their suit to desegregate the penitentiary. The attorney had conferred with Hood and one Lambur, and had asked the prisoners to send him information concerning alleged tear gas incidents which might be useful in a case he was then litigating. The same day of the conference prisoner Lambur was incarcerated in a high security section and, as heretofore stated, eight days later Hood was transferred to the penitentiary and put in a padlocked cell. No satisfactory reason for the treatment accorded these men has ever been given. The response received to his several inquiries as to why he had been accorded the treatment referred to was a brief notation from an official to the effect that Hood knew the answers as well as he did.

The files reflect a letter from the Director indicating that Hood and others had been sent to the penitentiary as a result of "agitation" that they were allegedly committing among State Farm inmates. The evidence before this Court shows that the agitation apparently was Hood's inquiries about tear gas incidents.

On March 31, 1969, guards took an inmate named Hargrove from a cell near Hood in a fashion that Hood thought was rough. On that same day he wrote to an attorney—the same attorney with whom he had conferred at the State Farm—and in this letter he wrote of the alleged rough treatment and remarked about alleged poor medical care. The following day he was placed in B-basement, a high security area. That the prison authorities imposed summary punishment on Hood for exercising his right to communicate with an attorney about conditions of confinement is clear. As a consequence he remained in B-basement for thirteen months.

LEROY MASON

A named plaintiff, Leroy Mason, admitted to the Richmond Penitentiary in 1965, had no noteworthy clashes with prison authorities prior to 1968. In early 1968 Mason was known by the authorities to have contacted an attorney concerning certain prison conditions, in particular the alleged segregated nature of the State Penal System. In July 1968, while he was working as a Chaplain's Assistant at the penitentiary, there came about an inmates' non-violent strike or work stoppage. The Court finds that Mason had no prior knowledge of the work stoppage.

The then Superintendent, Peyton, suggested that the prisoners go to their respective work places and elect several spokesmen with whom he would confer. Of those spokesmen Mason was elected as an inmate representative, and generally he spoke for those representatives and met with Superintendent Peyton several times, but continued to perform his regular job. By that time Mason was a named plaintiff in a class action suit pending in this Court for the purpose of requiring a racial desegregation of the Virgina Penal System.

On July 19, 1968, four guards came to Masons cell, handcuffed him and took him to the isolation cell block in the prison hospital where he remained in what amounted to solitary confinement for approximately a month. It is to be noted that another spokesman, one Pegram, met the same fate. Prison records indicate that the transfer of Mason was allegedly for refusal to return to work, for his own protection, and in an effort to keep him incommunicado. No hearing in regard to this punishment was held and he was kept in an isolation cell for approximately thirty days.

Shortly after being released from isolation he was transferred on August 20, 1968 to the maximum security lockup, i.e., C-cell segregation block, and was held there until April 27, 1970. In addition, it was ordered that he lose ninety days good conduct time.

The Court finds that he was not accorded any hearing, and in addition his release from maximum security had been recommended for some time prior to his actual release from same. The record is devoid of any valid reason as to why he was not released sooner. While the Court is not fully apprised as to the use of punishment report forms in the prisons, it notes with some interest that the report of Mason's August 20th transfer to C-cell was apparently received by the Superintendent's office on August 19th.

While much disciplinary action was accorded many of the prisoners without notice or hearings and for reasons still vague to the Court, and in some instances simply upon the whim of a guard, in the treatment accorded Mason the record is devoid of any justification, and the Court is therefore satisfied that his punishment was attributable to his instituting an action in this Court for purposes of desegregating the Virginia Penal System.

Superintendent Peyton had stated that he could not say for sure whether Mason had stopped work during the strike. According to Peyton's explanation Mason was put into isolation only to keep him out of danger and contact with other inmates. Yet in spite of the uncertainty expressed by Peyton concerning any alleged work stoppage by Mason, ninety days good time penalty was imposed for allegedly refusing to work.

In late 1969 in spite of recommendations of the prison staff that Mason be released from maximum security, Cunningham refused to go along with the recommendation apparently on the basis of Peyton's reports that Mason had been a strike ringleader. Mr. Cunningham's justification for the continued refusal to air these charges in a hearing was based on the grounds that an emergency condition still persisted at the penitentiary. The proffered justification for Mason's segregation confinement and loss of good time is so specious as to add weight to the Court's conclusion that he had been penalized for his participation in a law suit begun in January 1968 in this Court in which he sought and achieved the desegregation of the Virginia Penal System.

THOMAS C. WANSLEY

Wansley, serving a life term, had apparently been in no difficulty prior to the strike in July 1968. He, like Mason, was one of the original parties in the suit filed in February 1968, for the purpose of desegregating the penitentiary. Wansley was one of several hundred inmates who refused to work on July 18th at the time of the alleged work stoppage. The Court finds that shortly thereafter he did request an opportunity to return to work. As a consequence of his actions he was placed in solitary confinement from July 1968 to August 1968 and kept in a cell for a period of ten months.

The Court is satisfied that, unlike Mason, Wansley knew of the contemplated work stoppage. It is of particular note that Wansley remained confined for some considerable period after other striking prisoners were returned to their regular duties. It is a fair assumption, and the Court finds, that the reason for this was his actions in the suit to desegregate the Virginia Penal System.

Penitentiary records indicate that the padlocking of Wansley was allegedly for "agitating" by advising other prisoners to file suits contesting their treatment and by telling others, after his return from Court on August 13, 1968, that guards were barred from using tear gas against them and, apparently according to him, would be jailed if they did. Wansley, the Court finds, was never formally confronted with this alleged charge of agitation and never saw the prison reports prior to the trial of this case. In short, he was put under padlock on the basis of reports that he was yelling in the cellhouse and "agitating." The witness Oliver recalled no details save that Wansley had not been violent. Peyton, in February 1969, made no effort to justify Wansley's detention beyond saying "in his judgment" he should be confined.

As already indicated, the trial of the issues before the Court consumed many days of testimony in which the Court heard at least 46 witnesses, including the named plaintiffs, and read designated depositions of others. As one would expect, the witnesses called on behalf of the plaintiff were for the most part prisoners who either were or had been confined in places of incarceration under the jurisdiction of the defendants. The Court is satisfied that the testimony received is representative of conditions existing generally throughout the Virginia Penal System.

[3] The Court has attempted to bear in mind in its ultimate conclusion that the burden is upon the plaintiffs to prove their case by a preponderance of the evidence, and this the Court is satisfied has been done.

The following additional factual findings are intended to be illustrative to the end that the Court's legal conclusions based upon some may be more readily understandable:

FREDDIE LEE HYTHON, JR.

Hython, a State Farm inmate for approximately six years prior to the date of hearing in this case, refused to perform work at that facility allegedly because another inmate had threatened him and he feared to mingle in the population. He explained his plight to a guard lieutenant and he was forthwith ordered to an isolation cell.

Hython's testimony has been weighed by the Court in light of the Court's conclusion that apparently he was a person of extremely limited intellectual capability. He had had his good time taken from him several times without benefit of a hearing, although he did have at least one hearing concerning good time forfeiture.

NATHAN BREEDEN

Breeden, a prisoner at the State Farm, was incarcerated in the C–5 high security section at his own request because of his alleged fears of persons in the general population. His testimony was of significance to the Court in that it corroborated the allegation brought out during the trial that it was common practice to place mentally ill inmates in solitary confinement.

While incarcerated in C–5 Breeden witnessed, in a manner of speaking, the death of another inmate, one Philip Lassiter. The Court finds that in late August of 1970, Lassiter was placed in a meditation cell by reason of the fact that he was mentally disturbed and his behavior was sometimes uncontrollable. Breeden, through an inmate named Marsh Whitney, secured copies of records of Lassiter's psychiatric care over the prior three years.

Between August 25th and Lassiter's death, while Lassiter was confined to a meditation cell, he screamed day and night apparently seeking help. Indicative of Lassiter's state of mind was that on that day he plugged the commode in his cell with a shirt, causing the flooding of his cell.

Efforts were made by Breeden to bring to the attention of the prison nurse the records he had secured from inmate Whitney. On August 27th Breeden spoke to a lieutenant and subsequently gave him a copy of what purported to be a doctor's letter diagnosing Lassiter's condition as chronic schizophrenia. On August 29th Breeden wrote to Superintendent R. M. Oliver about the case.

Lassiter continued to scream for help until he died on August 31st. At least four inmates in nearby cells corroborated Breeden's account including the fact that at some point, which the Court determines to be approximately August 26th, at least one guard had an altercation with Lassiter concerning a food tray, during which Lassiter, if not the guard, landed some blows.

It should be noted that Superintendent Oliver said that Lassiter had been placed in solitary confinement at his own request, and while he knew that the inmate was under psychiatric care, he never received reports of Lassiter's alleged screaming.

The Court finds that while it was not the routine practice to put mentally disturbed persons in solitary cells, they were occasionally placed there for want of other space pending commitment proceedings.

EDWARD R. BELVIN

The prisoner, Belvin, a person with a sixth grade education, had lost 66 days good time for alleged attempted escapes. He was accorded no hearings prior to the taking of his good time. The prison administration simply sent him a "green slip" revising his sentence. As a consequence of these sanctions, 66 days were added to his term.

In April, 1970, Belvin was in the prison hospital for treatment of a nervous condition. On one occasion he threatened to scream if he was not given a shot which he felt he needed. As a result he was taken to a meditation cell without a hearing. There the guards restrained him by handcuffing him and chaining his body to the cell bars. They wrapped tape around his neck and secured that to the bars also. Belvin remained in this position for fourteen hours until a guard cut him down at 4:00 a.m. Belvin was kept nude in a bare meditation cell for seventeen days during April. His clothing was taken because he refused to surrender a food tray to guards.

Guards in the penitentiary have had the authority to chain a violent man until recently; currently it can be done only at the Superintendent's orders. Prison policy, however, dictates that mentally disturbed inmates not be so treated, but rather that commitment proceedings be begun as soon as possible. It is inexplicable why Belvin was placed in an ordinary punishment cell rather than some less brutal form of confinement. He had reportedly twice attempted suicide prior to this episode, yet medical supervision appears to have been lax. The decision to chain him was made by guards, without the prior approval of any doctor, yet this incident did not, so far as the record shows, result in so much as a reprimand for those responsible.

BARRY CLINTON JOHNSON

Johnson, a prisoner under sentence of death, was placed in meditation three times. In January, 1969, he spent about seven days in meditation for complaining to guards and arguing about officials' treatment of money sent to him at the prison. The guards' reports recount a very poor attitude in making requests and nasty remarks about personnel. No hearing was held; Johnson gathered from a guard that his complaints about his money were cause for his "jailing." Just before his confinement, Johnson filed a complaint in this Court along with one Short alleging mistreatment by guards.

The second time, Johnson was reported as having harassed a guard when he inquired of him about some shirts which another correctional officer had promised him. The week before he had been shot with tear gas in his cell and had written to Philip J. Hirschkop, an attorney in his case, complaining about the incident. He also encouraged other inmates subjected to such treatment to write Hirschkop. Before his transfer to solitary, Johnson was accorded a semblance of a hearing in that he was taken to a back office and confronted with the charge by three guards, two of whom were officers. The allegedly harassed guard was not present at this hearing to be questioned. The guards sent him to meditation without advising him of the length of his stay.

In July, 1970, Johnson was sent to solitary for loud talking, although the man with whom he allegedly was engaged in loud talking was not punished. One guard, Captain Baker, had previously threatened to punish him for cursing other guards. Another, Gibbs, told him to stop complaining to courts and lawyers or he would be placed in solitary. Johnson was taken to solitary by five or six guards and brought the next morning to the guards' office. There, Gibbs threatened to cut off commissary privileges, hot water, and coffee if he did not cease his complaints. Others accused him of cursing a guard; he denied it, but they refused to check out his story. Less than two weeks before this incident Johnson had written a complaint letter to the Governor of Virginia.

When he was taken to C-cell solitary the third time, Johnson was punched by Captain Baker with a tear gas gun and then, at Baker's orders, chained to the cell bars. This endured for five days. His waist and arms were secured to the bars in such a fashion that he could just barely recline. He was not released in order to urinate or defecate.

At trial there was no cross-examination of this witness.

SAMUEL MACKMAN

Mackman, a fifteen-year veteran of the Richmond penitentiary, gave accounts of being placed in solitary and losing "good time" for breaking up a fight and for having requested his prescribed medicine. On October 31, 1968, punishment report has it that Mackman threatened to hit a guard, one Catron. This occurred, the prisoner said, after Catron shot him with tear gas for failing to eat.

In January of 1969, Mackman lost 90 days good conduct time for "yelling * * * cursing and raising hell." He spent ten days in meditation and received a "green slip" extending his sentence to 90 days. No hearing was held.

When the authorities concluded that Mackman in fact had only sought to break up a fight, they restored good time earlier lost. No hearing was held on the charge, however, at any time.

BERNARD R. BOWSER

Inmate Bowser, serving a five year sentence, has lost good time without any hearing. The Court is satisfied that Bowser, on being placed in meditation, was cognizant of the reason for it as well as the reason for good time being taken. The Court does find that no hearing, in at least several instances, was held with a view to finding the facts.

The same situation exists as to the witness Robert Powell and one Wiley A. Reynolds, another State Farm prisoner who, although he did receive the benefit of one or more hearings, stated the accusing guard was sometimes not present. The Court concludes that the regulations which existed frequently only became clear when one was punished for a violation.

WADE EDMOND THOMPSON

Wade Edmond Thompson testified concerning discipline in the correctional field units, the state convict road force. At Field Unit No. 27, he was placed in solitary confinement three times.

The first time, in March of 1969, a guard complained of his conduct and he was brought before a lieutenant, acting as superintendent. The complaining guard and a state highway employee were present as well. After about a week Thompson was released from "jail"; he learned sometime later that the charge had been insubordination.

In August, 1969, Thompson, feeling unwell, requested to see a doctor. Instead he was given the option of working on the road or going to solitary. He chose the latter.

In January of 1970, Thompson, having had a series of run-ins with one particular guard, was brought before the Superintendent on the latters complaint. The guard stated that Thompson had used profane language; another verified this, and the prisoner was sent to solitary by the Superintendent without an opportunity to state his side of the case.

On his request, Thompson was transferred to Unit No. 7 soon thereafter. At that camp, in February of 1970, Thompson and a number of others refused to work when the temperature fell to eleven degrees. Thompson was called into the Superintendent's office. He told that official that he would not work in such cold weather, as he understood he was not required to do, under applicable regulations. He was ordered to solitary confinement, where he spent twenty-four days, without a disciplinary hearing. Some weeks after his release he learned that he had lost sixty days' good time. Conditions in "solitary" were extremely crowded; from four to seven men were put in a one-man cell.

Thompson later went to Field Unit No. 18, from which he escaped. After trial and conviction for this offense, he was also docked eighty days of good time; no hearing was held.

This witness approached the Superintendent of Unit 18 to request another transfer, stating that he had difficulty living under the regulations. As an example, he stated that a guard in the mess hall had once forced another prisoner to eat a raw sweet potato. In response to this complaint, the Superintendent ordered Thompson summarily taken to solitary confinement. While in "jail," Thompson complained of his plight in a letter to Philip Hirschkop, an attorney. The very day that the letter was mailed, he was given a hearing on his infraction by three guards. The charge was "agitating" the inmate who balked at eating raw food. In fact, Thompson never spoke to the man, nor did he tell anyone save the Superintendent of the incident. This was the only "hearing" that Thompson ever was granted on the issue.

STANLEY DOUGLAS POWELL

Powell, an inmate of Correctional Field Unit No. 4 for six months prior to trial, stated that he was summarily punished for allegedly cursing a guard. Two days after the offense he was taken aside by that guard, Anderson, and one other; the latter ordered him to strip naked. Lieutenant Anderson thereupon struck him with a nightstick. Powell was taken to a doctor some time later and his head was stitched up. The same day he was taken before the Superintendent and ordered into solitary confinement. At some point during this episode, Powell wrote his brother about the incident. Anderson, having apparently intercepted the mail, called him in and said that if he made no trouble about the beating he need not go to "jail." Powell spent eighteen days in solitary confinement; he never had a hearing, nor was he given reasons for his punishment.

The guard, Anderson, testified that he struck Powell only after being attacked himself. Cunningham stated, however, that it is the policy throughout the penal system that any man who attacks a guard loses all of his good time. This did not occur in Powell's case. The Court rejects the account given by Lieutenant Anderson.

THOMAS JEFFERSON

Jefferson gave an account of a series of run-ins with authorities in various field units. His innocence of misconduct may be and indeed is open to question; nevertheless the procedures followed in imposing sanctions is not seriously disputed.

At Field Unit 16 he was sent to solitary three times at the order of various guards or guard officers. No hearing or statement of reasons was offered. A bread and water diet was enforced at various times.

As soon as he was transferred to Unit 2, Jefferson was jailed for 31 days for misbehavior without a hearing. Following an argument with guards in the dinner line, Jefferson was committed to solitary a second time. The guards refused to let him see the superintendent. When he argued, a guard shot him with tear gas and kicked him, although he did not resist. Twice again that day he was tear gassed in his cell. This jail term lasted 56 days, during which Jefferson did not have a shower nor get a change of clothing. In addition, he lost between sixty and ninety days of good time. No hearing was ever held.

Jefferson's reputation as a trouble maker accompanied him to Field Unit 4. Only minutes after his arrival he was jailed for "misbehavior"—cursing a guard. Jefferson, who is black, says this occurred when a white guard called him "boy." No hearing was held on this offense. This was the first of twenty-one terms he spent in "jail" in Unit 4. His offenses included refusing to work, refusing to work in cold weather, and talking to civilians on the highway. For an escape attempt he lost 60 days' good time. No hearings were held in any case, but he knew generally the nature of his alleged offense each time he was punished.

Superintendent Honeycutt of Field Unit No. 2 wrote to D. P. Edwards, Superintendent of the Bureau of Correctional Field Units, after the chow line affair, stating that he intended to keep Jefferson in a solitary cell indefinitely until his attitude toward authority changed for the better. Honeycutt in theory had no power to confine a man more than thirty days, but Edwards made no objection.

TIM SCOTT

Scott witnessed part of Jefferson's chow line melee. Jefferson was loud, Scott says, but he made no physical threats, nor did he resist physically. Another inmate persuaded him to submit and go to jail, according to Scott's testimony, which the Court accepts.

Scott himself is an adherent of the Black Muslim faith. As part of his religion he must each day wash the exposed parts of his body. At Field Unit 2 he was committed to a solitary cell when he was discovered washing in a basin in the dormitory. A guard, one Wyatt, directed him to stop. Scott protested that he was not breaking any regulation, but continued to wash. The guard drew up a charge and Scott went before the superintendent the next day. That official confronted him with Wyatt's charge and asked why he had not complied with the guard's order; Scott again replied that rules had been posted and no regulation forbade using the basin in the evening. He was sentenced to seven days in jail.

At Field Unit 11, to which he was transferred, Scott at one point asked to see a doctor. He was taken, examined, and returned. A guard lieutenant then brought him some medicine which had been prescribed and told him to take it. Another inmate told him that the "medicine" was suppositories, not to be taken orally; Scott had received no instructions. The lieutenant returned and discovered that Scott had not taken the medicine. After a hearing of sorts before the guards, the details of which do not appear, the prisoner was taken to another camp and put in solitary for nineteen days. On his return to Camp 11 he was notified that he had lost 30 days' good time for "misconduct." He asked the superintendent what his offense was; that officer said that Scott had asked to see the doctor when there was nothing wrong with him and then refused to take his prescribed medicine. Scott infers that he was punished because only a few days before a man in his camp, one Page Early, had died while begging to be allowed to see a doctor, and the authorities wanted to keep the matter quiet. In fact the superintendent and a guard told other inmates that if they tried to get word of Early's death out of the institution and into court they might be put in solitary or lose good time.

Scott's Islamic religion threatened to bring other sanctions upon him. A guard sergeant threatened him with transfer from Camp 2 if he continued to proselytize; a captain directed him to speak to no more than one or two at a time. Such restrictions are not imposed upon conversations on other topics, nor is the use of the washbasin restricted for others as it is for Scott. Cunningham himself said that by Scott's own account he had committed no offense.

GEORGE D. CEPHAS

Cephas experienced back trouble while assigned to Field Unit No. 26 in July of 1969. The camp authorities had him taken to two doctors on three different occasions. One of these told a guard lieutenant that Cephas should not be assigned to road work; the other confirmed that he needed medication, but that he should work. Some days after his last examination, Cephas had an attack of pain allegedly so severe that he could not get out of bed. The guard captain had him shackled and moved to Camp 30, where he spent twenty-six days in meditation. At Camp 30 Cephas' requests to see a doctor were denied. After his "jail" term he was returned to Camp 26 and reassigned to road work, although the foreman apparently allowed him to do light work. This was Cephas' only offense in prison.

FREDDIE LEE COLLINS

Collins, who has spent most of his term in Correctional Field Unit No. 2, was placed in solitary confinement three times between November 1969 and April 1970. Each time the charge was poor or unsatisfactory work. No formal hearing was held. Instead he was simply called before the superintendent, who informed him that his guards had reported Collins' misconduct. Collins went to jail. On one occasion the superintendent said merely that "his guards don't lie." During one twenty-one day stay Collins lost twelve pounds.

DAVID LEON BROOKS

Brooks also was committed to solitary confinement in field units three or four times without a prior hearing. At one time in October 1968, he lost 60 days of good time and was jailed for allegedly refusing to work. During one period of confinement Brooks was kept nude in his cell for nine days.

CHARLES LEE MELTON

Charles Lee Melton had a substantial record of infractions at Field Units 2, 31 and 7. "Jail punishment reports" indicate that in most cases the decision to punish was made by a two or three man board, including the superintendent. At Unit 31, Melton said, he was usually given a chance to explain his conduct by Superintendent Sumner.

On December 4, 1968, according to the defendants' records, Melton was jailed for the following reason:

> Offense: When E. Phillips #90872 was put in solitary he said might as well put him in.

Melton was heard on this "charge" by the superintendent alone. Records show that he was not released until March 12, 1969. Until February 12 he received full rations only every third day. Meals the other days consisted of four slices of bread, served twice each day. During the first 32 days of "jail" a window was left open in Melton's cell and snow fell in on him.

From July 29, 1970, through September 15, 1970, Melton was in a meditation cell in Camp 7; during this time his diet was bread and water for two of every three days and his weight fell from 160 to 140 pounds..

After his three month term in meditation had been served in 1969, Melton was transferred to the penitentiary where he was notified that he had lost all his accumulated good time—over twelve months—for refusing to work. No hearing was held.

Testimony by prison administrators illustrated the accuracy of Tolstoy's observations about the limits of bureaucratic power. A specific order invariably deteriorates in content as it travels from chief to subordinates on the line. Higher prison officials, generally speaking, displayed a confident perception of the rules and procedures applicable in various situations. Lower officers who in fact implement the rules were, however, less sure about the regulations governing the prisoners' conduct and their own.

[4, 5] The rule for years has been that, absent claims of gross violations of fundamental rights, federal courts will make no inquiry into the manner in which state prison officials manage their charges. McCloskey v. Maryland, 337

F.2d 72 (4th Cir. 1964). It is not difficult to discern the principal rationales for this doctrine. A prisoner after all is presumed to have been justly convicted and sentenced; that presumptively valid judgment imposed a punishment of confinement under certain contemplated conditions. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnstone, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948). This is not to say that prisoners possess no further rights to be infringed or liberties to be taken. However, while confined, their fate is by law in the hands of administrators whose acts, like those of most administrative decision-makers, may be presumed legal.

[6, 7] Furthermore, courts have, perhaps implicitly, honored the theory of criminal punishment that holds that men who have been found guilty of violations of criminal laws may be utilized, so to speak, by society for ends related to the general welfare, such as the deterrence of similar acts by others and the alteration of their own patterns of behavior. Criminal activity, it is thought, once proved by legal procedures, fairly works a forfeiture of any rights the curtailment of which may be necessary in pursuit of these ends, such as the right of privacy, association, travel, and choice of occupation. Because federal courts have considered themselves both lacking in the authority to dictate those uses to which society may put convicts and without the specialized knowledge to test the necessity of losing certain liberties to accomplish various goals, they have not generally questioned such deprivations. Even now no court has required that states adapt their penal system to the goal of rehabilitation.

[8] Moreover, in a society concededly subject to increasing legal regulations, prisoners more than any others are subjected to state control. State officials govern inmates' lives by a series of decisions on an hourly, indeed continual, basis. Many of their decisions may be subject to more than colorable constitutional attack. If each is to be subject for federal examination of a plenary sort, the energy and time of the federal judiciary and of state penal officials would be diverted to an inordinate extent. Even if the law permitted many such matters to be determined without the taking of testimony, little if any saving in time would be accomplished. Concerns of judicial efficiency must be among the reasons which cause courts to pause in considering whether Congress intended federal civil rights jurisdiction to extend over such claims. See Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971); Weddie v. Director, Patuxent Institution, 436 F.2d 342 (4th Cir. 1970).

[9] Nevertheless, whether detention should be imposed at all has always been matters for federal review. In consequence any substantial restriction upon access to a federal forum for examination of the legality of confinement has been barred as well. See, *e.g.*, Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969); McDonough v. Director of Patuxent, 429 F.2d 1189 (4th Cir. 1970).

[10] Recent caselaw too supports inquiry into prison administrators' restriction of constitutional rights other than that of liberty itself.

> There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene. It is clear however, that in instances where state regulations applicable to inmates of prison facilities conflict with such rights, the regulations may be invalidated. Johnson v. Avery, *supra*, 393 U.S. 486, 89 S.Ct., 749.

Prior to *Johnson* and since, federal courts have directed state and federal penal officials to honor convicts' claims to religious freedom, freedom of speech and association, and freedom from racial classification. See, *e.g.*, Brown v. Peyton, 437 F.2d 1228 (4th Cir. 1971); Carothers v. Follette, 314 F.Supp. 1014 (S.D.N.Y.1970); Lee v. Washington, 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968). The reasoning supporting such intervention must be that the prison authorities have shown no compelling need to suppress these rights. Plainly stated, they have not shown such remarkable success in achieving any conceivable valid penological end by means which entail the abridgment of these constitutional guarantees as might make their denial seem worthwhile. Cf. In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

[11] Courts have also intervened when sentences are administered in a manner that seems unintended and unauthorized by the convicting court. Relief is justifiable in some cases on the fairly basic rationale that to extend or augment punishment beyond that imposed by a state court is to penalize without due process. A valid state judgment affords no license to exceed its terms. Perkins v. Peyton, 369 F.2d 590 (4th Cir. 1966).

[12] Inquiry into the administration of sentences has also been promoted by the trend elsewhere in law to reject the so-called right-privilege distinction. Although state law may authorize the grant or withdrawal of certain benefits during incarceration, and state authorities may be taken, in sentencing, to contemplate the administration of their judgments in conformity with state law, still the federal Constitution circumscribes governmental power to withhold such benefits arbitrarily or discriminatorily.

Finally, penal authorities have been constrained to refrain from punishment deemed cruel and unusual in situations where some other penalty might legally be imposed. Some courts have, further, held that any penalty at all for an act which could not legally be a violation amounts to cruel and unusual punishment. Carothers v. Follette, *supra*, 314 F.Supp. 1026.

[13–15] Rejection of the right-privilege distinction as a sterile form of words has likewise cast doubt upon the logical difference between deprivations constituting "punishment" and those presented as techniques for the maintenance of "control" or "security." Presumably the consequence of labeling a deprivation a matter of control is that it may be imposed without procedural preliminaries. The distinction is unpersuasive. Substantial deprivations of rights even in matters called civil where no misconduct is alleged have not been permitted without due process. Reasons of security may justify restrictive confinement, but that is not to say that such needs may be determined arbitrarily or without appropriate procedures. In an obvious sense, too, any treatment to which a prisoner is exposed is a form of punishment and subject to eighth amendment standards. This is not to say, though, that prison officials may not treat their charges as individuals. Deprivation of benefits of various sorts may be used so long as they are related to some valid penal objective and substantial deprivations are administered with due process. "Security" or "rehabilitation" are not shibboleths to justify any treatment. Still courts must keep in mind that a recognized valid object of imprisonment is not just to separate and house prisoners but to change them. When it is asserted that certain disabilities must be imposed to these ends, courts may still inquire as to the actuality of a relation between means and end. The test of necessity will, as mentioned above, be more stringent when a deprivation of a fundamental constitutional right is involved. When officials assert lack of funds needed to achieve their goals by means which would not infringe constitutional rights, moreover, the attempted justification will usually fail. Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971).

[16] Extensive evidence was presented and detailed factfindings have been made for the reason that the plaintiffs contend, and the Court has concluded, that the constitutional violations of which they complain are not isolated deviations from normal practice but rather indicated traditional procedures in the state penal system. When such a showing is made it is the Court's duty not solely to amend so far as possible the defaults of the past but to prevent their likely recurrence in the future.

The Court, at trial, granted counsel a certain amount of leeway in presenting evidence; as a result the record runs at some points far afield into issues not strictly of constitutional scope. For this reason it bears examination not only by lawyers but by any officials of our state government concerned to provide a penal system better, perhaps, than required by minimum constitutional guaranties.

One problem raised and not resolved by a study of the cold record, the credibility of much of the testimony, pervades this case as it has few others in this Court's experience. Witnesses drawn from a society of convicts as a rule may not have so refined a regard for the value of truth as most citizens. All of the unreliable testimony in the case has not, however, come from members of the plaintiff class. Custodial personnel live with their charges in a climate of intimate tension; it would be surprising indeed if an exchange of standards and values did not take place between them. Prison administrators too, perhaps understandably, may develop a self-protective instinct that manifests itself in a tendency to preserve and fall back on the written record of propriety, although it may not reflect reality. These observations must lead this Court, and anyone else concerned with maintaining fairness in the operation of our penal system, to conclude that the fairest rules must fail to fulfill that goal if they are not administered by fair-minded and intellectually capable men. The work of custodial personnel is such as to frequently try the patience of Job. Nevertheless, the daily administration of rules for conduct of an admittedly different society requires not only firmness but awareness of the purpose of incarceration.

The proof shows three general classes of constitutional deprivation, each a subject for injunctive relief. Discipline has been imposed for the wrong reasons. It has been imposed in cases of what may have been validly punishable misconduct, but without the requisites of procedural due process. And, punishment of a sort that the Constitution bars in any event has been imposed.

[17] Just as the cruel and unusual punishment clause restrains the judiciary and the legislature. Ralph v. Warden, 438 F.2d 786 (4th Cir. 1970), reh. denied, March 1, 1971, so also it limits the discretion of administrators. The evidence here shows that these limits have been exceeded.

[18] In gauging the compliance of Virginia officials with this constitutional command, the Court has not found it necessary to explore deeply the question whether a practice in issue constitutes a punishment. Compare Trop v. Dulles, 356 U.S. 86, 78 S. Ct. 590, 2 L.Ed. 2d 630 (1958). As noted above, in an obvious sense any term of incarceration, with all of its incidents, constitutes a penalty. The purposes of the eighth amendment might best be served by treating the preliminary issue as thus resolved. Any treatment imposed upon the convict would then be tested by the cruel and unusual standard. See, *e. g.*, Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark.1971), aff'd 442 F.2d 304 (8th Cir. 1971). A deprivation imposed for purposes not of deterring misconduct in the institution but instead for some nonpunitive end, such as disabling a man from injuring himself or property, or for no specific purpose at all, might nonetheless be unconstitutional. A defect in that approach taken alone is that it tends to obscure the issue of disproportion between offense and penalty—a valid eighth amendment inquiry—when a deprivation has concededly been imposed as a consequence of past misconduct within the prison and for the end of deterrence and example. A prisoner is both a participant in society as a whole and a member of the smaller penal community, a relatively closed society subject to a separate set of rules. The cruel and unusual test may validly be applied, in effect, on both levels to intraprison discipline.

Courts have not articulated detailed standards establishing what penalties are cruel and unusual. It is recognized that standards may change. Indeed it is hoped that they will:

> The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. * * * The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. Trop v. Dulles, *supra*. 356 U.S. 100–101, 78 S.Ct. 598.

The provision, some have suggested, may be violated by the imposition of a penalty that is excessive in comparison with prevailing practice disproportionate with the gravity of the crime, or greater than is necessary to achieve the permissible aims of punishment. Rudolph v. Alabama, 375 U.S. 889, 84 S.Ct. 155, 11 L.Ed.2d 119 (1963) (Goldberg, J., dissenting from denial of certiorari). It is cruel and unusual, furthermore, to impose any punishment whatsoever upon an individual guilty of no harmful act but solely possessed of an incriminating condition. Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

A penalty may likewise violate the clause even though it consists only of exposing an individual to a high probability of suffering grievous injury. Cruelty exists for example in imposing on a man the anguish of continued uncertainty as to his fate, with knowledge that severe consequences may befall him for unforeseeable reasons against which he is powerless to protect himself:

> This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him and when and for what cause his existence in his native land may be terminated. * * * It is no answer to suggest that all the disastrous consequences of this fate may not be brought to bear on a stateless person. The threat makes the punishment obnoxious. Trop v. Dulles, *supra*. 356 U.S. 102, 78 S.Ct. 590, 598; See also, Holt v. Sarver, *supra*, 309 F. Supp, 372–373.

Our own Court of Appeals has stated that lawful incarceration must not include exposure of the prisoner to the risk of arbitrary and capricious action Landman v. Peyton 370 F.2d 135, 141 (4th Cir. 1965), cert, denied 388 U.S. 920, 97 S.Ct. 2142 18 L.Ed.2d 1367 (1967).

Although most of the administrators who testified in this case stated that the imposition of a bread and water diet is now extremely rare, the issue is not moot nor unsuitable for injunctive relief. The director still retains the power to approve bread and water, and in the past he has done so on application by subordinates. Moreover, subordinates have on their own initiative used the practice without approval in the past.

Bread and water provides a daily intake of only 700 calories, whereas sedentary men on the average need 2000 calories or more to maintain continued health. Evidence is not presented on the other nutritional shortcomings of a bread diet, but it does no violence to doctrine of judicial notice to remark that vitamin, protein, and mineral content is probably deficient as well. The purpose and intended effect of such a diet is to discipline a recalcitrant by debilitating him physically. Without food, his strength and mental alertness begin to decline immediately. It is a telling reminder too that prison authorities enjoy complete control over all sources of pleasure, comfort, and basic needs. Moreover, the pains of hunger constitute a dull, prolonged sort of corporal punishment. That marked physical effects ensue is evident from the numerous instances of substantial weight loss during solitary confinement.

Even the Superintendent of the Virginia State Farm, one of whose foremost concerns and rightly so, must be the safe confinement of dangerous men, has not found it necessary to use bread and water in his memory. Other officials report a very rare use of the tactic. A current manual on prison practices strongly disapproves any disciplinary diet which impairs health. American Correctional Association, Manual of Correctional Standards (hereinafter A.C.A. Manual), 417 (1966).

[19] The practice is therefore both general disapproved and obsolescent even within this penal system. It is not seriously defended as essential to security. It amounts therefore to an unnecessary infliction of pain. Furthermore, as a technique designed to break a man's spirit not just by denial of physical comforts but of necessities, to the end that his powers of resistance diminish, the bread and water diet is inconsistent with current minimum standards of respect for human dignity. The Court has no difficulty in determining that it is a violation of the eighth amendment. Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968) ; Wright v. McMann, 321 F.Supp. 127 (N.D.N.Y 1970)

[20] Likewise, to restrain or control misbehavior by placing an inmate in chains or handcuffs in his cell is unconstitutionally excessive. The evidence showed that in Belvin's case this practice left him with permanent scars, and in his case and that of Johnson it caused lack of sleep and prolonged physical pain. Neither man was released to respond to a call of nature nor could they eat. Further details are not necessary in order to reveal that it constituted physical torture.

> Corporal punishment should never be used under any circumstances. This includes such practices as * * * handcuffing to cell doors or posts, shackling as to enforce cramped position or to cut off circulation * * * deprivation of sufficient light, ventilation, food or exercise to maintain physical and mental health forcing a prisoner to remain awake until he is mentally exhausted, etc. * * * * * * *The regulations of well-run* prisons usually provide, in effect, *that force may be used only when necessary to protect one's self or others from injury, or to prevent escape, or serious injury to property.* A.C.A. Manual, *supra*, 417 (italics original).

Corporal punishment of this variety is outmoded and inhuman. The Constitution forbids it, and this Court shall enforce that ban. It is not contended that a man in a locked solitary cell cannot be kept from escaping, injuring others, or destroying things of value. The only justification for the policy is to prevent self-injury. (Ironically, Belvin seems to have been seriously cut by his "protective" chains, either despite or on account of his own efforts). The Court simply cannot conceive that no less drastic means can achieve that legitimate end. The extent of the constitutional guaranty is not fixed by the administrators' budget or imagination. Jackson v. Bishop, *supra*, 404 F.2d 580. Here the evidence shows that Belvin's fetters were put on without medical approval. A doctor, if called on for a recommendation, might well have prescribed some form of drug treatment. Only recently have penitentiary officials sought to borrow some strait jackets for such emergencies. Indeed to a great extent the control of violent inmates has been left in the hands of guard personnel, who call to their superiors' attention incidents such as Belvin's experience only after the fact by brief written reports. Thus efforts to explore alternative treatment methods have not been exhausted ; indeed they have hardly been commenced. On this showing the practice of fettering inmates in closed cells is both cruel and unnecessarily so.

[21, 22] The practices of taking inmates' clothing while in solitary and keeping them in unheated cells with open windows in the winter have been dis-

approved in Wright v. McMann, *supra*. Such penalties, which work to degrade an inmate by denying him any of the sources of human dignity and imperil his health as well, are cruel and unusual. The Court recognizes, as pointed out by the prison authorities, that recalcitrant inmates may well, and undoubtedly do, break windows deliberately—nevertheless this conduct can surely be punished by a method less likely to endanger the health of the inmate. See also, Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971). The Court will permit an inmate to be kept nude in his cell only when a doctor states in writing that the inmate's health will not thereby be affected and that the inmate presents a substantial risk of injuring himself if given garments.

[23] The instances of chaining, denial of clothing, and exposure to cold have, on the evidence, not been everyday occurrences. New regulations in Guideline 800 also purport to outlaw some of these practices. Nevertheless injunctive relief seems appropriate for the reason that in the past punishments of this sort have been inflicted by guards acting alone. Administrators, in other words, have not been in complete control of their subordinates. There is no particular reason to believe that this situation is being remedied. See Landman v. Peyton, *supra*. Only injunctive relief will adequately protect the plaintiff class.

[24] On occasion prisoners in solitary confinement have been deprived of their mattresses and blankets as punishment for misconduct. The new guidelines authorize this to be done to punish "destructive behavior." In the past this has been done for such offenses as noise-making, as in Moon's case. The penalty is undoubtedly harsh, but the Court is not persuaded that it is cruel and unusual. There is no evidence that it had a substantial effect upon anyone's health. If the cell is otherwise clean, and well heated, and the prisoner keeps his clothing, it should not be detrimental. Other cases holding solitary confinement, which included a denial of bedding, cruel and unusual generally included the element of unsanitary conditions. See Wright v. McMann, *supra*, 321 F.Supp. at 139–141; Knuckles v. Prasse, 302 F.Supp. 1036, 1061–1062 (E.D.Pa.1969); Hancock v. Avery, 301 F.Supp. 786, 792 (M.D.Tenn.1969); Jordan v. Fitzharris, 257 F.Supp. 674 (N.D.Calif.1966).

[25] The practice of crowding several men into a single "solitary" cell, however, must be condemned. Wade Edmond Thompson was held for twenty-four days in a meditation cell at Field Unit No. 7. When first "jailed," he was put in a one-man cell with six or seven others. All had apparently refused to work in cold weather, but there is no evidence that any threatened violence. Thompson was taken briefly to a solitary cell at another camp, but then for some reason he was returned to Unit 7 and kept for a further two weeks in a cell with three other men. Three men slept on two mattresses, and the fourth slept in one corner with his feet stretched over the others. They were also denied the usual Bible to read. Several administrators stated that more than one man should be put into a solitary cell only if emergency conditions required it. In Thompson's case, however, no such justification is shown. Clearly if a number of men had earned a term in meditation, the authorities had the capacity to distribute them among various penal units. The crowding is thus shown unnecessary and takes on a vindictive aspect.

[26] Cases involving overcrowding in prison cells have generally included aggravating conditions such as denial of clothing, unhygienic conditions, and other abuses. Anderson v. Nosser, *supra*; Knuckles v. Prasse, *supra*. Here there is no sign that health was in fact jeopardized. *Anderson* and *Knuckles* concerned conditions that prevailed for less than three days. Four men here were penned like animals in a small cell, designed for one, for fourteen days without respite. Lack of space made sleeping very difficult. If confined men retain any claim at all to human dignity, they cannot be needlessly so dealt with for such long periods of time. The system's new guidelines provide that superintendents shall "proceed to alleviate [excess occupancy] as promptly as possible." Again, in view of the system's past difficulties in securing compliance with its regulations at lower levels, the Court shall enjoin extended, unnecessary confinement in solitary cells of more men than the cell was meant to hold.

[27, 28] Tear gas has also been used to silence noisy, misbehaving men while confined to their cells. Thomas Jefferson was gassed three times, and others have been gassed in their cells at the penitentiary. The problem of dealing with convicts who persist in disturbing entire cell blocks and inciting others to join in the disorder is a real one. The Court has not found any instances of gassing men in cells who were not currently disruptive. Yet the use of gas to disable a man physically who poses no present physical threat constitutes a form of corporal

punishment, the use of which in such a situation is generally disapproved. Undoubtedly it is effective, but it is painful, and its abuse is difficult to forestall. The problem appears to arise because there appears to be no way to isolate a misbehaving inmate to an area where his rantings will not disturb anyone. This difficulty is, however, one of the systems own creation. If chaining a man to his bars, punishing him with a strap, and other corporal punishment should be enjoined, Jackson v. Bishop, *supra*, this Court cannot make a principled distinction which would permit the use of tear gas to punish or control the non-threatening inmate.

[29] There was evidence, furthermore, that some inmates were not permitted to shower during extended stays in solitary. Relief on this score will be denied because there is no proof that at such times they were also denied the necessary sanitary items so that they might wash in their cells.

The Court would not enter upon a review of the procedural aspects of prison discipline were there a lack of evidence in this case that discipline had been imposed upon men guilty of no infraction. Unfortunately, there is credible evidence to the contra. Many of the prisoner witnesses, who testified that they were placed in solitary cells or lost certain privileges, readily admitted that they had disrupted legitimate prison functions. Others, however, just as plainly were penalized for communicating with courts or lawyers in a fashion that might not be punished, for protected litigation activities, for offenses that simply had not occurred, or on the basis of unfounded suspicion. In other cases the reasons men were punished cannot be determined with certainty ; had more explicit procedural directions been followed in such cases there might well be no question now. These factors distinguish this case from Sostre v. McGinnis, *supra*, where the evidence did not disclose a pattern of due process violations, and from such cases as Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970), and Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969), where procedural faults did not work to deny any fundamental rights.

Still, matter for preliminary inquiry is whether this Court ought to consider any claim of unlawful denial of good time credit prior to the exhaustion of state court remedies. The general rule is that the 1871 Civil Rights Act, 42 U.S.C. § 1983, will not serve as a substitute for the federal habeas corpus remedy, such that one might avoid the exhaustion requirement by invoking the former. Rodriguez v. McGinnis, 451 F.2d 730 (2d Cir. 1971). So stated, the rule begs the question : When must a claim be presented in habeas?

Recent caselaw has expanded the scope of federal habeas corpus, so that the writ is available to achieve relief other than immediate release. See, *e.g.*, Peyton v. Rowe, 391 U.S. 54, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968). In consequence it has been said that "[i]nsofar as one attacks only the state computation of sentence-service, and not the validity of the entire sentence, habeas corpus is still the proper remedy in those exceptional cases where the state's computation of service of a sentence presents a federal question." Schiro v. Peyton, No. 13,086, mem. decis. (4th Cir. 1968).

[30, 31] In a sense, of course, any claim of violation of a prisoner's constitutional rights amounts to an allegation that he is "in custody in violation of the Constitution * * *," 28 U.S.C. § 2254(a). Still it has long been clear that many such claims, whether or not they might have been raised in a habeas case, see Developments in the Law—Federal Habeas Corpus, 83 Harvard L. Rev. 1038, 1079–87 (1970), are nontheless properly presented in a civil suit in equity. Prevailing precedent in this Circuit permits claims that good behavior time has been arbitrarily denied, and that injunctive relief is therefore owing, to be litigated in § 1983 actions, and indeed disapproves the use of habeas corpus. Roberts v. Pegelow, 313 F.2d 548 (4th Cir. 1963). If the scope of habeas has since expanded, see Johnson v. Avery, *supra ;* Peyton v. Rowe, *supra*, there is nonetheless no reason to assume that the ambit of § 1983 has thereby *pro tanto* contracted. Other circuits as well have dealt with "good time" claims under the Civil Rights Act. United States ex rel. Campbell v. Pate, 401 F.2d 55 (7th Cir. 1968) ; Douglas v. Sigler, 386 F.2d 684 (8th Cir. 1967). The rule of Rodriguez v. McGinnis, *supra*, does not prevail in this Circuit.

[32] Whether certain procedural prerequisites are required before intraprison discipline is imposed is governed by conventional due process standards, adapted as may be necessary to the prison environment. The argument that the right to be free of the substantial restraints of solitary confinement, "padlock," or maximum security segregation or to earn statutory "good time" are matters of mere legislative or administrative grace fails in the face of current constitutional doctrine.

The constitutional challenge cannot be answered by an argument that public assistance benefits are "a 'privilege' and not a 'right.'" Shapiro v. Thompson, 394 U.S. 618, 627n. 6, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as to disqualification for unemployment compensation, Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) ; or to denial of a tax exemption, Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958) ; or to discharge from public employment, Slochower v. Board of Higher Education, 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 692 (1956). The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring) and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly, as we said in Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961), "consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by governmental action." See also, Hannah v. Larche, 363 U.S. 420, 440, 442, 80 S.Ct. 1502, 4 L.Ed.2d 1307 (1960). Goldberg v. Kelly, 397 U.S. 254, 262–263, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) ; see also, Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970).

Our Court of Appeals has given effect to this principle in a closely related area, that of parole revocation. Bearden v. South Carolina, 443 F.2d 1090 (4th Cir. 1971). The court there required, at a minimum, notice of allegations said to amount to noncompliance with parole conditions, and an opportunity for a hearing at which one might present witnesses. The Fourth Circuit has also expressed concern over the lack of certain due process elements in the Penitentiary, which lack may bring about the arbitrariness that the due process clause forbids. In Landman v. Peyton, *supra*, the court took note that the entrusting of disciplinary matters to guards, so that contact between prisoners and administrators is seldom made, invites capricious and partial decision making. *Id.*, 370 F.2d 141.

In dictum, the Second Circuit has recognized the requirement of procedural fairness:

> We would not lightly condone the absence of such basic safeguards against arbitrariness as adequate notice, an opportunity for the prisoner to reply to charges lodged against him, and a reasonable investigation into the relevant facts—at least in cases of substantial discipline. Sostre v. McGinnis, *supra*.

That case has been followed in this circuit in Bundy v. Cannon, 328 F.Supp. 165 (D.Md., 1971), where the court required procedural safeguards prior to withholding of good time credit, transfer to maximum security, and solitary confinement.

Similar possible penalties were found sufficient grievous in Clutchette v. Procunier, 328 F.Supp. 767 (N.D.Cal., 1971), to require notice, hearing before an impartial tribunal, confrontation, the presentation of witnesses, counsel or a substitute, and written factfindings. See also, Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970) ; Meola v. Fitzpatrick, 322 F.Supp. 878, 8 Cr.L.Rptr. 2404 (D. Mass. 1971) ; Carothers v. Follette, *supra;* Kritsky v. McGinnis, 313 F.Supp. 1247 (N.D.N.Y.1970) ; Morris v. Travisono, 310 F.Supp. 857 (D.R.I.1970).

As directed in *Cafeteria Workers, supra*, the Court must identify and analyze the precise nature of the individual interest at stake and compare it with the purpose and function of the governmental body. See also, Hannah v. Larche, *supra*, 363 U.S. 440–453, 80 S.Ct. 1502. The disciplinary function fulfilled in the decision to place a man in solitary confinement, to deny good time credit, to "padlock" him in his cell involuntarily, or to impose the substantial disabilities of maximum security confinement, adjudicates the question of a substantial deprivation or grievous injury. Whether cast in terms of a finding of unfitness to circulate in the general population or seen as a determination of guilt, the decision to place a man under greater than usual restraint is founded upon a finding of noncompliance with general prison standards. Cf. Goldberg v. Kelly, *supra*. The effort to depict "C" cell and the like as a rehabilitative facility, usable at the penal authority's discretion, is unsuccessful. See Howard v. Smyth, *supra*.

The individual interest at stake is obvious—the avoidance of severe punishment. The privileges at stake are substantial. A man in solitary confinement is denied all human intercourse and any means of diversion. Padlock confinement isolates the individual as well from his fellows. Maximum security confinement is a lesser penalty, but like the others it interrupts a prisoner's efforts at rehabilitation and curtails many recreational activities. Loss of good time credit may in effect amount to an additional prison sentence. On the other hand, the effect on a man in prison of a further sixty day term may be less than the effect of a sixty day jail term on a free man. The prisoner, one assumes, has already suffered loss of his job and damage to his reputation, and his family ceased to rely upon him, when he was convicted, whereas the free man may find these interests imperiled by even a short sentence. The losses which ensue from a prison disciplinary action may not be as lasting as the employment opportunities at stake in Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959) and Willner v. Committee On Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963). At the same time deprivation may be momentarily as telling as the loss of financial support or housing which were treated in *Goldberg* and *Caulder*.

A proper consideration is the effect that the introduction of procedural safeguards may have on legitimate prison functions both within and without the ambit of discipline. The security of a population confined against its will in close quarters is a prime concern. Moreover, administrators must have a certain leeway in allocating scarce resources available for rehabilitative purposes. The speed with which misbehavior is punished may rightly be considered essential to its effectiveness. Administrators with many nondisciplinary duties must not be sidetracked from their tasks. Minor on-the-spot exactions for minor offenses may well be deemed necessary to keep order effectively; it is not only major regulations, after all, that must be enforced.

[33] However, to say that individual rights may be sacrificed to custodial or rehabilitative necessity is not to state that courts will not inquire as to the need for such sacrifices and the reality of the claimed benefits. In re Gault, *supra*, 387 U.S. 17–31, 87 S.Ct. 1428.

[34] In these adjudicatory proceedings the Court concludes that certain due process rights are both necessary and will not unduly impede legitimate prison functions.

First, the decision to punish must be made by an impartial tribunal. This bars any official who reported a violation from ruling. Goldberg v. Kelly, *supra*, 397 U.S. 271, 90 S.Ct. 1011; Escalera v. New York City Housing Authority, 425 F.2d 853, 863 (2d Cir. 1970). A substantial question arises whether field unit officials can ever so divorce themselves from events in their small units sufficiently to sit impartially. The Court has not been shown that this is impossible, but in any individual cases participation in occurrences giving rise to a charge shall bar any man from sitting in judgment. There appears to be no reason to require that the disciplinary board be composed of any specific number of individuals. Each member of a panel must, however, be free of prior involvement with the incident under examination so that he may settle the case on the basis of the evidence at the hearing.

Second, there shall be a hearing. Disposition of charges on the basis of written reports is insufficient. Prisoners are not as a class highly educated men, nor is assistance readily available. If they are forced to present their evidence in writing, moreover, they will be in many cases unable to anticipate the evidence adduced against them. Particularly where credibility and veracity are at issue * * * written submissions are a wholly unsatisfactory basis for decision." Goldberg v. Kelly, *supra*, 397 U.S. 269, 90 S.Ct. 1021. Necessarily a hearing encompasses the right to present evidence in defense, including the testimony of voluntary witnesses.

A hearing must be preceded by notice in writing of the substance of the factual charge of misconduct. Only with written notice can a prisoner prepare to meet claims and insist that the hearing be kept within bounds. In re Gault, *supra*, 387 U.S. 33, 87 S.Ct. 1428. A reasonable interval to prepare a defense must be allowed as well, but the Court declines to fix any definite period. Rather whether a trial has been too speedy must be determined on a case-by-case basis.

Cross-examination of adverse witnesses likewise is necessary. The Court appreciates the concern of prison officials that interrogation by prisoner of the guard force may be at variance with their ordinary respective positions in the penal hierarchy. Because most disciplinary cases will turn on issues of fact, however, the right to confront and cross-examine witnesses is essential. Escalera v. New York City Housing Authority, *supra*, 425 F.2d 862. It is, however, well within the power of the disciplinary official or tribunal to restrict questioning to relevant matters, to preserve decorum, and to limit repetition.

Fundamental to due process is that the ultimate decision be based upon evidence presented at the hearing, which the prisoner has the opportunity to refute. Goldberg v. Kelly, *supra*, 397 U.S. 271, 90 S.Ct. 1011; Escalera 1. New York City Housing Authority, *supra*, 425 F.2d 862–863. "To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on," Goldberg v. Kelly, *supra*, 398 U.S. 271, 90 S.Ct. 1022. To permit punishment to be imposed for reasons not presented and aired would invite arbitrariness and nullify the right to notice and hearing.

[35] The Court will not require an appellate procedure. However, if higher authorities than the disciplinary committee feel duty bound to re-examine decisions, their review must be restricted to the charge made and the evidence presented. The practice of going outside the record in search of bases for punishment must cease. "It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made." Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948).

In addition, for the reason that the evidence shows that some inmates are unfortunately intellectually unable to represent themselves in discipline hearings, the tribunal should permit a prisoner to select a lay adviser to present his case. This may be either a member of the noncustodial staff or another inmate, serving on a voluntary basis. See Bundy v. Cannon, *supra*. Notice of charges shall include the information that such assistance is available.

[36] In other instances where proceedings may result in the loss of substantial rights, the right to representation by counsel has been considered an essential element of due process. "Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests of the recipient." Goldberg v. Kelly, *supra*, 397 U.S. 270, 90 S.Ct. 1022; see Caulder v. Durham Housing Authority, *supra*, 433 F.2d 1004. Following Bearden v. South Carolina, 443 F.2d 1090 (4th Cir. 1971), it seems that there is no requirement that the state provide legal aid. However, where substantial sanctions are possible and the assistance of counsel may be of benefit, retained counsel is necessary to protect the factfinding and adjudication process unless there is shown some "compelling governmental interest in summary adjudication," Caulder v. Durham Housing Authority, *supra*, 433 F.2d 1004 n. 3, the fulfillment of which is inconsistent with the right to retained counsel. Cf. Brown v. Peyton, *supra*, 437 F.2d 1231. The state has not endeavored to do so, other than by testimony that the presence of counsel might turn the hearing into a "hassle." The Court does not accept this speculation as well-founded. Experience with *pro se* trial litigants indicates that the contrary is more likely true. On the other hand, the Court has observed that prison officials legitimately desire to conduct disciplinary proceedings speedily. Therefore a prisoner who desires to secure counsel for hearing may be required to notify the committee of that fact, and postponement of the hearing to secure counsel may reasonably be limited to four days.

These minimum due process standards are necessary when solitary confinement, transfer to maximum security confinement, or loss of good time are imposed, or a prisoner is held in padlock confinement more than ten days.

The imposition of the minor fines disclosed by the evidence, for example, or, hypothetically, loss of commissary rights, restriction of individual recreational privileges, or padlocking for less than ten days, do not require this panoply of guaranties. The right to be represented by another may be omitted. Written notice may be dispensed with, and appellate review need not be formally conducted. The Court will only require verbal notice and the opportunity for a hearing before an impartial decision maker, with a chance to cross-examine the complaining officer and to present testimony in defense. As always, however, procedural formality may not shield arbitrary action. Impartiality and a chance to air the facts may be expected to prevent arbitrary action as well as the good faith factual errors which the Court has observed in the record.

Few of the opinions to date on prison discipline treat in depth the real problem of vagueness in institutional regulations. The evidence, however, shows that the purposes of the constitutional requirement of reasonable specificity—fair warning so that one may conform to the rules, and exactness so that arbitrary penalties or penalties for protected conduct will not be imposed—have been ill-served by the rules enforced against Virginia prisoners. Particularly in a situation where the safeguard of public trial is absent, cf. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971) (Brennan, J., concurring and dissenting), and necessarily so, other procedural safeguards against arbitrariness should not be slighted. Morris v. Travisono, *supra*, 310 F.Supp. 861, notes the seriousness of the problem, but does not resolve it. Talley v. Stephens, 247 F.Supp. 683 (E.D.Ark. 1965), required in cases of corporal punishment that recognizable standards of conduct be set. Likewise it is settled that imprisonment does not remove a prisoner's right to be free from arbitrary sanctions. Landman v. Peyton, *supra*.

The Constitution requires even of minor criminal laws that they give in advance fair notice of forbidden acts. Palmer v. City of Euclid, 402 U.S. 544, 91 S. Ct. 1563, 29 L. Ed. 2d 98 (1971); Bouie v. City of Columbia, 378 U.S. 37, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). Virginia prisoners have been penalized for such ill-defined offenses as "misbehavior" and "agitation." Recent amendments to discipline procedure have not sharpened the outlines of these offenses. On the other hand, existing regulations governing maximum security facilities, which are in the record, demonstrate that the prison authorities are capable of phrasing their requirements with reasonable specificity. The Court does not imply approval of all of those rules; they show, however, that the authorities themselves believe in the practical value and feasibility of rules. See also the disciplinary code reproduced in Bundy v. Cannon, *supra*.

To recanvass the full range of justifications for the vagueness doctrine would unduly prolong this opinion. For useful commentary, see McGautha v. California, 402 U.S. 183, 91 S. Ct. 1454, 28 L. Ed. 2d 711 (1971) (Brennan, J., dissenting); Soglin v. Kauffman, 418 F. 2d 163 (7th Cir. 1969). In the prison context these considerations argue for application of the requirement:

1. At least in Virginia, where discipline has been used to suppress litigation efforts, the need exists to establish in advance, to avoid a chilling effect, the limits of administrators' power.
2. Like other elements of due process, prior notice of standards of behavior enhances the prisoner's sense of fair treatment and contribute to rehabilitation. See In re Gault, *supra*.
3. Equal treatment of similar conduct—at least to the extent of recording offenses, if not in penalties—will be more certain with fixed rules.
4. The ingredient, in vagueness law, of something like a doctrine forbidding delegation of legislative powers is essential in prison, where the risk of arbitrary action by lower officials is great.
5. The need for judicial review of prison disciplinary actions may greatly decrease in the future if violations of existing rules can be shown.
6. Prison life is highly routine; it therefore ought not to be difficult to establish in advance reasonably clear rules as to expected behavior. Automatic compliance may be expected of many.
7. Specificity has been required in the academic sphere, where administrators likewise are not specialists in legislation.
8. Severe sanctions may result in prison; the greater the individual loss, the higher the requirements of due process.

Countervailing considerations deserve mention:

1. Life is complex in prison as well as outside, and all forms of misbehavior cannot be anticipated. Some may go unpunished for want of a rule.
2. Administrators ought not to be put to the choice of foregoing discipline in such cases or resorting to the ordinary criminal process for flexibility may work to the benefit of the institution and the inmates as well.
3. Legalistic wrangling over whether a rule was broken may visibly undermine the administration's position of total authority, necessary for security's sake.
4. Prisoners, unlike free men, must well know that they are considered potentially dangerous men and must expect to be highly regimented. In such cases the law requires less in the way of notice, and places a greater burden on the individual to make inquiry or ask permission before acting. Cf. United States v. International Minerals & Chemical Corp., 402 U.S. 558, 91 S. Ct. 1697, 29 L. Ed. 2d 178 (1971).

[37] The objections to the application of some vagueness principle may all be met simply by relaxing the standard somewhat in deference to the state's legitimate needs, rather than by abandoning it. The Court concludes, therefore, that the existence of some reasonably definite rule is a prerequisite to prison discipline of any substantial sort. Regulations must in addition be distributed, posted.

or otherwise made available in writing to inmates. Discussion here will be confined to those bases for punishment disclosed in the evidence.

[38] "Misbehavior" or "misconduct," for which, for example, Jefferson and Scott were penalized, offers no reasonable guidance to an inmate, Giaccio v. Pennsylvania, 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 447 (1966), whereas it leaves the administrator irresponsible to any standard. Penalties may not be imposed on this ground.

[39] "Agitation" appears to encompass discussing litigation with other prisoners, assisting them in litigation, or advising them as to the law. It also includes, as is apparent from Thompson's case, complaining to the authorities, and according to Cunningham, it may include the giving of incorrect legal advice. Prison authorities may legitimately fear the incitement of rule violations and the interruption of orderly activities, and may punish men who engage in such conduct. However, the ban on "agitation" at once gives no fair warning that certain conduct is punishable and, in practice, includes the rendition of legal advice and the preparation of legal pleadings, protected activities.

[40] On the other hand, the Court is not persuaded that the offenses of "insolence," "harassment," and "insubordination," directed against custodial or administrative personnel, are unduly vague. This is not to say, however, that in a given case the imposition of sanctions on such grounds may not be found arbitary if not based on evidence.

[41, 42] The evidence has shown as well certain instances of the imposition of penalties for constitutionally protected activities. The law by now should be clear that whereas prison officials may reasonably regulate the preparation of legal pleadings in service of valid state interests, they may not prohibit or punish inmates for conducting litigation of their own or for rendering assistance to other inmates, in the absence of any other adequate source of legal aid. Johnson v. Avery, *supra;* Ex parte Hull, *supra;* Nolan v. Scafati, *supra;* Gittlemacker v. Prasse, 428 F.2d 1 (3d Cir. 1970); Blanks v. Cunningham, *supra;* Landman v. Peyton, *supra;* Coleman v. Peyton, *supra;* Edwards v. Duncan, *supra;* Meola v. Fitzpatrick, *supra.* These rights have been construed to extend to prisoners desiring to sue under the Civil Rights Act. Nolan v. Scafati, *supra;* Blanks v. Cuningham, *supra.* There is also a corollary right to communicate for the purposes of enlisting an attorney's aid. McDonald v. Director, *supra.* The evidence as to procedural irregularities makes it unnecessary to analyze in depth how these rights have been abridged in disciplinary proceedings according to the evidence. Nevertheless express findings of fact have been made as to each instance in which such abuses were disclosed, for the sake of a complete record.

The exercise of the right to contest confinement or punishment has also been restricted by less sophisticated means. Landman and Hood were transferred to the Penitentiary from lower security institutions. Arey was kept in maximum security for many months, and some of his letters to attorneys simply were not mailed. Hood's correspondence with counsel was intercepted and copied. Landman and Johnson were explicitly told to refrain from filing complaints or, in Landman's case, doing so for others. Landman's papers too have been taken or destroyed. Mason was kept in "C" cell as retribution for his successful desegregation suit.

In addition, for many years persons held in meditation could not file suits or write to counsel. Counsel have suggested that recently this prohibition has been lifted. In view of the difficulty, which the Court has mentioned before, which administrators have experienced in securing compliance with regulations by subordinates, and the tardiness of changes in regulations, injunctive relief is nonetheless due. Lankford v. Gelston, 364 F. 2d 197, 203 (4th Cir. 1966); Rakes v. Coleman, 318 F. Supp. 181 (E.D.Va. 1970).

[43, 44] Arey's attempts to communicate with a state legislator likewise deserves relief, on the evidence. The Court can conceive no interest that the State's executive arm might have in keeping whatever information penitentiary inmates may have out of the hands of lawmakers. Compare New York Times Co. v. United States, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed. 2d 822 (1971). No witness has suggested one. Interruption of mail to public officials infringes upon the first amendment rights of prisoners and likewise the right of legislators to be informed. Palmigiano v. Travisono, 317 F.Supp. 776, 786 (D.R.I.1970). An injunction shall issue as to this practice.

[45] Appropriate relief for the class shall look both to past and to future violations. Damages are not at issue in this instant proceeding. The Court shall

direct that all good time lost as a result of hearings conducted without compliance with the standards set forth herein be restored, with leave to retry those punished within a reasonable time. Those confined in padlocked or solitary cells likewise shall be released, subject to retrial. Men reasonably thought dangerous may be detained apart from the general population pending their hearings. Inmates in "C" cell and other maximum security units shall be afforded hearings on the derelictions which gave rise to their incarceration within thirty days or shall be released to the general population. Injunctive relief shall likewise be granted as to those practices deemed cruel and unusual or violative of other constitutional rights.

[46] Rehabilitative treatment, to repeat, constitutes no talismanic state interest which will justify any exactions from individual prisoners. In this case the state officials have candidly not attempted to make it so; the word rarely was spoken in the course of the trial. Partly because they failed to assert the necessity for current disciplinary procedures for the sake of rehabilitation, the Court has presumed to intrude as it has into the workings of the system.

For the time may come in the future when substantial reasons for depriving men of various liberties, to the end that their behavior may be amended, may be presented. "Prison authorities have a legitimate interest in the rehabilitation of prisoners, and may legitimately restrict freedoms in order to further this interest, where a coherent, consistently-applied program of rehabilitation exists." Brown v. Peyton, *supra*, 437 F.2d 1231. At such time the best justification for the hands-off doctrine will appear. While courts by definition are expert in the field of quasi-criminal procedures, their knowledge of the administration of programs that educate and change men may rightly be questioned. Likewise, it may be imagined that judicial intervention or formal administrative procedures might be positively harmful to some rehabilitative efforts.

This is not to say, of course, that courts should then abandon the individual. However, where the state supports its interest in certain practices by demonstrating a substantial hope of success, deference may be owing, and courts may tend to find certain rights, now protected by conventional procedures, implicitly limited while a man is incarcerated.

APPENDIX B

RESPONSE TO INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE QUESTIONS ON H.R. 7332, 92ND CONGRESS VERSION OF H.R. 4600

SEPTEMBER 11, 1972.

MR. WAYNE W. SCHMIDT,
IACP Research Division,
International Association of Chiefs of Police,
Gaithersburg, Md.

DEAR MR. SCHMIDT: This is in response to your letter of July 18, 1972 in which you ask for the legislative intent pertaining to several subsections of Section B in my Law Enforcement Officers' Bill of Rights. I hope that, after reviewing the bill in light of the following comments, the IACP will decide to take a favorable position regarding this important piece of legislation and will work with me by recommending appropriate changes that would better achieve the intent I have in mind.

First, it should be noted that in the preamble of Section "B", page 3, the nature of the investigations referred to is specifically stated. The intent is to set a constitutional procedure in the investigations of complaints of wrongdoings directed against law enforcement officers of all ranks which are serious in nature and which would lead to disciplinary action, demotion, dismissal or criminal charges. The bill in no way attempts to limit, obstruct or prevent the full investigation of charges properly made. What it does intend is that the subjects of the investigation are accorded the full panoply of rights granted to others in similar circumstances.

In response to your inquiries, the following is submitted:

SECTION B

Subsection 2.—The word "investigation" as used in this subsection refers to the questioning or interrogation of the subject or witnesses in connection with the overall circumstances of the case and related to the central physical location where follow-up questioning and interrogations shall be conducted and from which field investigations, if required, shall be controlled or directed. However, it is my intent to limit, as much as possible, the indiscriminate invasion of privacy especially as it relates to a police officer's home. Of course, in instances of serious crimes, it would be hoped that proper legal procedures, legally applied for, would not preclude investigations or searches of homes. This section does not attempt to restrict or obstruct the conduct of a complete investigation of all formal charges, but rather, it should serve to extend to police officers of whatever rank, the same rights enjoyed by others who may be the subject of similar investigations. The traditional relationship between police administrators, supervisors and outside investigators on the one hand, and law enforcement officers on the other has often been the cause of serious derogations of the lawful and constitutional rights of police officers which are normally available to others. The line between obeying a command of a superior in the work-relationship and the civil and constitutional rights of law enforcement officers is a blurred one. Hopefully, my bill would make the distinction more clear for the benefit of the accused, the accuser and the investigator. If a change in the wording of this subsection is necessary to clarify this intent, I would hope you would be willing to make suggestions and recommendations either to me directly or at a committee hearing.

Subsection 3.—The intent of this subsection, which I think is rather clearly stated, is to prevent a "shotgun" questioning technique with mass rapid-fire questions posed by several persons simultaneously, geared to confuse and intimidate the officer being questioned. The subsection does not limit the number of people present as long as they are properly identified and as long as their collective questions are directed to the subject through one interrogator at that particular session. It also does not limit, of itself, the number of investigative sessions held or the duplication of sessions by other investigative agencies, as long as such sessions are within the limits of other laws and take into consideration the rights of those being questioned.

Subsection 5.—To prevent frivolously registered complaints or those of dubious basis, which may be designed to or may tend to overwhelm and breakdown the system, it is my feeling that complaints which are to be formally investigated should be sworn to by either the complainant or a duly recognized representative. Naturally, if the complaint refers to an obviously serious criminal act, the rules of judicial procedure would prevail. However, for complaints related to performance of duty, the charges should be sworn to by either the complainant, or if not feasible, by his attorney, relative or duly appointed representative. The swearing of complaint can be administered by either a notary public or officials designated to entertain such complaints.

Subsection 7.—This subsection would not prevent any request legally demanded. The subsection deals with intimidations, threats or rewards that would tend to abridge the subject's rights or circumvent legal requirements.

Subsection 8.—Again the interrogation, as referred to in this subsection, deals with the taking of formal statements by investigators during formal hearings on the complaints and would not preclude the usual supervisor-police officer relationship as it relates to performance of duty or on-the-spot inquiries made to determine the nature of disputes or to obtain any other information which would expedite efficient and rapid performance of duty.

Subsection 10.—The key words in this subsection are ". . . whenever the interrogation relates to the officer's continued fitness for law enforcement service." Within the context of the preamble in Section B describing the nature of the investigation, this subsection refers to formal questioning during formal investigative sessions. The asking for explanations by supervisors must be distinguished from the taking of formal statements during investigations of formally filed charges which may be the basis of disciplinary action, demotion, dismissal or criminal charges.

The courts have ruled on the question of counsel for police officers on two levels. On the one hand, a police officer under investigation has a right to counsel during an interrogation involving a criminal charge. On the other, he does not have this right when the interrogation is an internal one or involves only disciplinary action. The severity of punishments in disciplinary actions and the likelihood that these same actions may result in criminal charges leads me to believe that the courts have not taken full account of the possible ramifications of their decisions.

May I again emphasize one point which I feel is of major importance in your consideration of the bill. The bill deals with several facets of the general law enforcement personnel problem. A principal thrust of the bill is the establishment of procedures to deal with police-public disputes while another is contained in

Section B dealing with the rights law enforcement officers should have during investigations carried on within the department he serves. Certainly it is not my intent to prevent the efficient administration of law enforcement institutions especially when it relates to weeding out undesirables. But, in order to help reduce the incidence of police wrongdoings which may be motivated by a serious alienation from the same public and institution the police serve, I feel we must recognize that police officers are to be afforded the same justice we expect them to dispense to their public clients. To accord them this recognition and to provide them with a viable system for redress of their legitimate grievances as they relate to constitutional rights including those abridged by members of the general public, would make whole the system of justice. The development of a better officer, much more dedicated to his organization, to the performance of enlightened police service, and to the public he so gallantly serves will surely be enhanced because of it.

Your cooperation in developing a legislative proposal which would take a giant step in the achievement of this goal would be sincerely appreciated.

With all good wishes, I am,

Fraternally yours,

MARIO BIAGGI.

RESPONSE TO SENATOR MCGOVERN'S CRITIQUE OF THE BILL H.R. 7332 (92D CONGRESS VERSION OF THE BILL H.R. 4600)

OCTOBER 26, 1971.

Senator GEORGE MCGOVERN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCGOVERN: I am happy to learn that you have expressed an interest in my bill H.R. 7332 which would require the states to establish a Law Enforcement Officers' Bill of Rights and a Law Enforcement Officers' Grievance Commission. I am outlining responses to the questions you posed in a previous letter regarding several sections of the bill. Please be aware of the fact that my position on these points is based on my experience and knowledge of the problems facing our nation's police officers. To have a staff member discuss these points in detail with your legislative assistant so that we may arrive at a mutually agreed upon wording of the sections in question. I'm certain this can be easily accomplished.

Regarding the provisions requiring that officers under investigation shall be informed of the names of all complainants, I'm sure you agree that at some point in this case this must be done. However, if initial confidentiality is to be maintained so that complainants would not be discouraged, I would suggest that the wording be expanded to allow a preliminary investigation before revealing to the officer concerned the source of the complaint. It is my feeling that when the officer is notified of the complaint, he should at some point soon thereafter be made aware of his accuser before a final charge is made.

The requirement to have complaints sworn to by the complainants is a procedure that already exists in many established systems. It serves several purposes which are beneficial to the complainant and the investigating board. First, it impresses the complainant with the seriousness of the board and tends to show him that the investigators are giving his case the importance it deserves. Secondly, it will tend to prevent frivolous complaints with which many boards are presently plagued.

Section (C)—"Representation on Complaint Review Boards," does not mandate the creation of such boards, but does require a number of representatives of law enforcement agencies equal to the number of public members and, if appropriate, government officials on the Board wherever such Boards are already in existence or may be created in the future. The alternative to a bilateral or tripartite board is an independent one with no police members on it. Experience shows that much resistance has been generated against such boards by both the public and the police institutions. By including police representatives on boards both the police and the public have substantially lessened their opposition to complaint review boards altogether. In my opinion, a multi-representative board would eliminate charges of bias and would provide a balanced "watchdog" system within the board itself. In the end, mutual understanding of each segments problems would more likely result and hopefully mutually developed solutions would be arrived at. The principal objective in any case would be the bringing together of the parties to air differences in an open and effective forum.

Your suggestion that an independent board would be balanced by the establishment of the grievance commission is well-made. However, the advantages of having a multirepresentative system at both ends would, in my estimation, far outweigh this. Additionally, should the officer resort to the grievance commission to rebut charges made in the complaint board and seek redress from any bias he may believe was exercised in his case, it would, in effect, establish an appellate level at the Commission. I would hope that each agency be organized to resolve completely as much as possible any issue coming before it.

In reference to the section on Civil Suits Brought By Law Enforcement Officer, I realize that officers already have this right. In most cases, however, subtle intimidation or harassment by higher police or government authorities has inhibited many aggrieved officers from exercising this right. I would agree to a re-wording of this section to state that this right is recognized and no direct or implied prohibitions by government officers or police authorities be exercised to discourage police officers from instituting such actions. Making both parties to a dispute aware that such a possibility exists (many people as well as police officers are not aware that police have this right) might serve as an additional deterrent to the occurrence of abuses.

Regarding disclosure of finances, in many instances police agencies have been basing personnel assignments on the financial status of the officers alone. My bill would prohibit financial disclosures ". . . for purposes of assignment or other personnel action . . ." only. You can readily see the injustices of such situations. Negative pre-judgments of the officer's morals can be made because he either has "too much" money or he has "too little . . . and may resort to unlawfulness to supplement his income." Financial disclosures in cases where unlawful activity is either suspected or charged would not be precluded by this section.

Concerning the Grievance Commission, this agency would entertain any grievance which arises out of a claimed infringement of a right allegedly committed by members of the public, other law enforcement agents or government officials. I would agree to re-word this section to show that *any* person or agency may be the subject of the officer's complaint.

In addition to the above, I would also require law enforcement officers to submit *sworn* grievances to the Commission. This would balance the requirement imposed on civilians in their complaints

Also, to clarify this section further, I would include that Law Enforcement Officers' grievances submitted to the Commission should be only those *that arise out of the performance of the officers' official duties.*

Sub-section (I) does not contemplate creation of a *new* course of action in federal civil courts for infringement of rights guaranteed by the bill. Rather all presently available courses of action are guaranteed to the officer. The intent of Sub-section (I) is that no present recourse at any level would be precluded by action taken with the state's Grievance Commission. The bill requires that states pass appropriate legislation to implement the Bill of Rights (see page 2, line 5, H.R. 7332). Therefore, civil actions for violations of the provisions of the Bill of Rights, where legislated by the states, would be actionable in a state court.

Finally, your question dealing with the creation of the Grievance Commission under the lever of the Omnibus Crime Control and Safe Streets Act while the Complaint Review Boards are not similarly mandated, is interesting. A point to be made here however, is that the public is presently provided with many avenues for the adjustment of complaints against law enforcement officers: the police administrator, the district attorney, the courts, the chief executive, and other investigative state and federal agencies, not to mention the part played by the press in this area. In large cities, Complaint Review Boards have already been added to this list. Police officers, on the other hand, see their only recourse against abusive action by members of the public through an arrest (and, in more tense situations where patience has been overtaxed, resorting to violent reaction). The establishment of a Grievance Commission would provide the officer with an easily available and impartial agency for the lodging of his legitimate grievances against members of the public. Where police authorities and other government representatives are involved, the Commission could be the only avenue the officer may have available to him. The Commission would give police officers a sense of belonging to what they now view as a one way system of enforcing civil rights. Hopefully, it would eliminate their frustrations and reduce significantly the number of complaints lodged by the public with Police Complaint Review Boards.

In closing, let me again re-iterate that I look forward to your sponsorship of this bill in the Senate. I also hope you agree to arrange to have this matter discussed more fully so that an identical bill can be introduced in both houses.

With all good wishes, I am,

Sincerely yours,

Mario Biaggi.

APPENDIX C

Bill of Rights for Members of the New York City Police Department

(As authorized by T.O.P. 167, dated April 26, 1967 and amended by T.O.P 167-1, dated August 8, 1967.)

In response to a long campaign waged by the Patrolmen's Benevolent Association to safeguard the rights of police officers involved in Departmental investigations, the Police Department has established the following procedures to govern the conduct and control of such investigations:

The wide ranging powers and duties given to the Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts come many questions concerning the actions of members of the force. These questions often require immediate investigation by superior officers designated by the Police Commissioner, such as those superior officers assigned to the Police Commissioner's Investigating Unit. First Deputy Commissioner's Investigating Unit, Chief Inspector's Investigating Unit, Chief of Patrol's Investigating Unit, and the Civilian Complaint Review Board. In an effort to ensure that these investigations are conducted in a manner which is conducive to good order and discipline, the following guidelines are promulgated:

(1) The interrogation of a member of the force shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations should be scheduled for the daytime and the reassignment of the member of the force to the second platoon should be employed. If any time is lost, the member of the force shall be compensated. (See S.O.P. 18, s. 1962—revised and reissued 8/26/65.)

(2) The interrogations shall take place at a location designated by the investigating officer. Usually it will be at the command to which the investigating officer is assigned or at the precinct within which the incident allegedly occurred.

(3) The member of the force shall be informed of the rank, name and command of the officer in charge of the investigation, as well as the rank, name and command of the interrogating officer and all persons present during the interrogation. If a member of the force is directed to leave his post and report for interrogation to another command, his command shall be promptly notified of his whereabouts.

(4) The member of the force shall be informed of the nature of the investigation before any interrogation commences, including the name of the complainant. The addresses of complainants and/or witnesses need not be disclosed; however, sufficient information to reasonably apprise the member of the allegations should be provided. If it is known that the member of the force being interrogated is a witness only, he should be so informed at the initial contact.

(5) The questioning shall not be overly long. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.

(6) The member of the force shall not be subjected to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promises of reward shall be made as an inducement to answering questions.

(7) The complete interrogation of the member of the force shall be recorded mechanically or by a department stenographer. There will be no "off-the-record" questions. All recesses called during the questioning shall be recorded.

(8) If a member of the force is under arrest or is likely to be, that is, if he is a suspect or the target of a criminal investigation, he shall be given his rights pursuant to the Miranda decision as set forth in T.O.P. 158, c.s.

(9) In all other cases, the law imposes no obligation, legal or otherwise, on the Department to provide an opportunity for a member of the force to consult with counsel or anyone else when questioned by a superior officer about his employment or matters relevant to his continuing fitness for police service. Nevertheless, in the interest of maintaining the usually high morale of the force, the Department shall afford an opportunity for a member of the force, if he so requests, to consult with counsel before being questioned concerning a serious violation of the Rules and Procedures, provided the interrogation is not unduly delayed. However, in such cases, the interrogation may not be postponed for purposes of counsel past 10 A.M. of the day following the notification of interrogation. Counsel, if available, and a representative of a line organization may be present during the interrogation of a member of the force. Obviously, requests for an opportunity to consult with counsel in connection with minor violations, such as absence from post, failure to signal, failure to make entries, etc., will be denied unless sufficient reasons are advanced.

(10) In any case, the refusal by a member of the force to answer pertinent questions may result in disciplinary action.

INVESTIGATION BY OTHER UNITS

Basically, the aforementioned guidelines will be observed by all superior officers or other officers of this department while conducting investigations of actions of members of the force. In connection with investigations of alleged criminal acts or serious violations of the Rules and Procedures, the provisions of subdivisions 8 and 9, concerning counsel and/or line organization representatives, shall be observed. However, in connection with minor violations (such as absence from post, failure to signal, failure to make entries, etc.) requests for an opportunity to consult with counsel or with a line organization representative will be denied by the investigating officer unless sufficient reasons are advanced. In such cases, the investigating officer shall have discretion as to whether or not the interrogation is to be recorded.

PUBLIC SAFETY OFFICERS' BENEFITS ACT—LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

THURSDAY, JULY 26, 1973

House of Representatives,
Subcommittee on Immigration,
Citizenship, and International Law,
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10:25 a.m., pursuant to notice, in room 2226, Rayburn House Office Building, Representative Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Eilberg, Holtzman, Keating, and Wiggins.

Also present: Garner J. Cline, counsel; Arthur P. Endres, Jr., assistant counsel; and Donald G. Benn, associate counsel.

Mr. Eilberg. The subcommittee will come to order.

We will resume our hearings on the bills pertaining to the Public Safety Officers' Benefits Act, and there are many versions of that, and the law enforcement officers' bill of rights, H.R. 163, and H.R. 4598. Of course, Mario Biaggi, Congressman Biaggi, has been in the hot seat and we have been asking questions for the last day or so. And, Congressman Wiggins, I understand that you have some questions that you might ask, and I think it would be appropriate for that to take place now, if you are ready.

TESTIMONY OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK—Resumed

Mr. Wiggins. Thank you, Mr. Chairman.

As you know, I missed perhaps the last hour of questioning yesterday, and it is possible that other members of the subcommittee have gone over these questions and, if so, I apologize for that. Please feel free to say you have answered my inquiry fully, if it is in the record, and if that is the case.

Your legislation has so many cosponsors, Mr. Biaggi, that it behooves this subcommittee to take a careful look at it and I intend to do that and elicit your opinion with respect to the meaning of the language used in your bill, H.R. 4598. First, I want to discuss the theory of the legislation. It is my understanding that it proposes an amendment to the Omnibus Crime Control and Safe Streets Act to require that each State, which is the recipient of grants under the LEAA program to adopt a procedure for dealing with law enforcement officers' grievances. Have I accurately stated the general thrust of your legislation?

Mr. Biaggi. Yes.

Mr. Wiggins. The bill envisage that each State would enact a statute to implement the terms of this Federal legislation, is that right?

Mr. Biaggi. That could be an avenue.

Mr. Wiggins. Well, is it?

Mr. Biaggi. Of implementing it.

Mr. Wiggins. Is it envisaged by you that this Federal law will be the law which will be administered by the local police department in dealing with police officer grievances, or will the individual jurisdictions be required to enact a local ordinance or State statute, as the case may be, embodying the elements of the Federal statute?

Mr. Biaggi. As a matter of pragmatics and history, it would seem to me that the State would follow and implement and incorporate into their own legislative books, provisions of this Federal law.

Mr. Wiggins. I see. This, then, gives them an option. If they wish to receive LEAA money, they must enact a State or local statute, as the case may be, which corresponds to the provisions of the Federal law.

Mr. Biaggi. And the alternative, the various departments could administratively incorporate these provisions into the rules and regulations. However, they would have, in addition to having the force in effect by law by virtue of their administrative action, it would be, at the same time, using the Federal law. So, what we can envisage is the State doing it to deal with every agency through legislation, or have every agency that would want to benefit as a result of LEAA funds amend their rules and regulations so that these provisions would be incorporated into their body of rules.

Mr. Wiggins. All right. That is the way I read your legislation, too. It would require implementation by each State or other employer of a law enforcement officer.

Now, the legislation treats with the problem of law enforcement officers in their relationships with one another, the relationships with their employer, and their relationships to the public. in general. Is that right?

Mr. Biaggi. Yes. I think that it is a particular emphasis on their relationship with one another. As a matter of practical experience, you will find superiors in departments in pursuit of objectives will be a little less careful about the rights of police officers than they would be of a prisoner that they might have arrested for a heinous crime.

Mr. Wiggins. Well, now, to my knowledge, this is the first time that the Congress has ever purported to legislate and to mandate personnel relationships within any local jurisdiction or with any other level of government, save its own. This would be a massive involvement of the Federal Government in the internal operation of the local police department. Does that bother you, Mr. Biaggi?

Mr. Biaggi. To begin with, I do not agree with the premise, and it does not, as a matter of fact, follow. You say personnel relationship. What we are really talking about is due process and civil rights, and if that is to be interpreted as a personnel relationship, I do not think that is what you have in mind.

Mr. Wiggins. Well, whatever we call it. For example, Congress does not involve itself with mandating the "due process" requirement that an employer must accord his employee under normal circumstances. So far as I know, the Federal Government does not tell a department store how it is going to treat its employees who may have a grievance.

Mr. BIAGGI. Well, except in this. The Federal Government has told department stores and has told political subdivisions throughout the country and just about everyone in position, how they should deal with their employees or human beings insofar as their civil rights are concerned.

Some people may regard that as intervention, and, some people initially said that is not necessary because the Constitution provided it, but, the fact of the matter is, there was not a legislative statement subsequent to the enactment of the Constitution, and even more practically, civil rights were continued to be denied so many people. And the Federal Government has intervened in many, many areas, intervened in very specific ways, in the very same way that I am asking them to intervene in this case. And, that is, their funding in their programs in all of the States of the Union, and they say, now, if you seek these funds, we place certain conditions in order to be declared eligible. And that is exactly what we are doing here. I think in my statement, I have enumerated a number of instances, housing, busing and the like.

Mr. WIGGINS. Well, can you give me any illustration in which the Federal Government has purported to involve itself in the personnel relationships between an employer and employee in the manner in which we are asked to do so under this legislation?

Mr. BIAGGI. Let me talk in terms of the personnel relationships. We have to define that. What is that? What are we talking about? What I am asking here is not that the Federal Government involve itself in the personnel relationships. What I am asking is that the Federal Government see that certain standards are maintained, standards that have been given to every other citizen of the United States.

Mr. WIGGINS. That is my question. What other citizens have had standards such as these imposed upon them?

Mr. BIAGGI. I read yesterday that to begin with the New York City Police Department currently has a bill of rights and has had it since 1967. It is not new. It works. It has worked very effectively with one ultimate result: better relationships internally and, hence, more effective law enforcement mechanism. Too, the Maryland Legislature is now considering it. The Memphis——

Mr. WIGGINS. Before you read a list of state laws, I do not doubt the right of an employer to establish personnel rules with respect to its employees. A better analogy would be for you to point to a New York City statute mandating rules on Federal employees, because just the reverse of that is going to happen under this legislation. That is the kind of illustration I would hope you would point out.

Mr. BIAGGI. No. I do not think that that could occur. It is very unlikely to occur because we do not have the leverage, if you want to work the reverse procedure. The New York City could not impose its will on the Federal Government.

Mr. WIGGINS. Why not?

Mr. BIAGGI. Because it could not involve itself in the jurisdiction and ordinarily the Federal Government would not find itself in that local jurisdiction, agreed. And, ordinarily, I would agree these problems should be resolved on a local basis. It would be the Alpha and the

Omega. It would be the proper way. But, we learned that it does not work. Now, we have found a way in which the Federal Government can inject itself into the picture to correct a universal injustice, with rare exception, and that way is through the LEAA funds.

Now, what happens there is that when they apply for funds they must meet certain standards. LEAA has established certain standards already and in this session of Congress, they said that in order to qualify for funds, there must be no sex discrimination. In order to qualify for funds, just recently, there must be elimination of minimal rights. That is intervention in the eyes of some. It is not intervention in my mind because the city has the right not to apply for these funds.

Mr. Wiggins. Let me say that in my view, Mr. Leonard and Mr. Kleindienst did not distinguish themselves by imposing height limitations on local police departments.

Mr. Biaggi. I could not agree with you more.

Mr. Wiggins. I thought it was outrageous. But, nevertheless, I will agree with you that it is probably within the constitutional authority of Congress to use the carrot and a stick approach, and say, "We do not mandate anything upon you, but if you wish to avail yourself of Federal money, then you will meet these standards." I do not raise a constitutional question; rather, I raise the question of the wisdom of the Federal Government involving itself in local personnel matters. And I gather your answer to be that you think it is wise.

Mr. Biaggi. Well, you see, we are talking about personnel management. I do not conclude that that is what we are doing.

Mr. Wiggins. Well, we will get into some illustrations shortly where I would conclude that that is exactly what we are doing.

Mr. Biaggi. I think what we are truly concerned about primarily is the right, or the rights of the individual.

Now, it has been universally accepted that we are concerned about the rights of all individuals, and I recited yesterday that Judge Merhige established a set of requisites for a group of people which were comparable to those that we have offered in our bill for police officers. The difference? Those that he established were inmates in prison. What we are trying to do, really, in fact, is establish for policemen the very same rights that the criminals that they have arrested now possess.

Now, if you get into the cases in point, which I have illustrated, of course, out of these cases comes the abuse. We are not against, mind you, the prosecution and we are not offering this to help wrongdoers. The fact of the matter is in experience of the last 6 or 7 years in New York City, we find that where heretofore the wrongdoer, the policeman had an argument in court and he was denied his due process, denied his rights. As a result of the implementation of the bill of rights in New York City, this argument was vitiated and, hence, there were less court suits, and the relationship within the police department is better. Now, we have a captain's mast which eliminates the whole—well, reduces substantially these grievances.

Mr. Wiggins. Well, you would agree, I am sure, that this is probably the first time, if this legislation becomes law, that the Federal Government has become directly involved in the personnel relationships within a local police department?

Mr. Biaggi. Well, we are playing with whether the Government becomes involved in personnel relationships and I understand what you are saying. And I think that we have to delineate that very carefully. The Government, in my judgment, is not involved in the State or the city in order to qualify for these funds. All we are asking, and this bill would provide another requirement, another condition that must be met, and there are more and more conditions being imposed on these funds with each congressional action. All we are asking is if the city or State would qualify for these funds, they must meet a condition. This the condition; that is, the rights, basic rights, constitutional rights, of police officers be guaranteed.

Mr. Wiggins. I do not want to pursue that matter at this moment.

Mr. Biaggi. Beyond that, Mr. Wiggins, the Federal Government does not interfere at all, in no way. No representative appears or involves itself within the internal action of a police department, none whatsoever. It is just a question of establishing a condition, the State willing to meet it and the funds being forwarded, and God knows, the State of New York is now receiving hundreds and hundreds of thousands if not millions of dollars in LEAA funds, with other conditions that have been met without any Federal intervention.

Mr. Wiggins. I now want to proceed with the bill.

It accords certain rights to law enforcement officers. The term "law enforcement officer" is used repeatedly. In your bill, there is no definition of that term. Is there a definition in the basic legislation that is being amended, of what constitutes a law enforcement officer?

Mr. Biaggi. Well, it would seem to me that that would have to be defined.

Mr. Wiggins. What is your definition?

Mr. Biaggi. I think the definition could be found in the bill, proper, and that would apply.

Mr. Wiggins. In the basic legislation?

Mr. Biaggi. The basic legislation, yes.

Mr. Wiggins. Now, I would like you to have the bill in front of you, so that I can ask you questions with respect to it. [See p. 24.]

Mr. Biaggi. What page are you on, Mr. Wiggins?

Mr. Wiggins. Let us start on page 3. The first specific right is the right to engage in political activity while not on active duty as a police officer. Would that include the right to hold public office?

Mr. Biaggi. Well, in order to hold public office, they would have to leave the department. This question was posed yesterday, but I will respond to it again. Most of them were and it is an area—the theory is that the prohibition, the prohibition on the part of the policemen or the effect of the Hatch Act, in my judgment, has been outmoded. When the Hatch Act was first enacted, I do not know how many, there might have been several hundred thousand people involved, employees, and they were prohibited from participating in political activities. But, since that time, and it was a time when the Federal Government was not so deeply involved in political subdivisions but we have had, oh, better than a quarter of a century go by, and what we have seen is that the Government is just about into every level of government, and Federal moneys are found in almost every agency in the country. As a result of that, we have millions of people who, if the Hatch Act was very strictly construed and enforced, would be prohibited from participating in political activities.

Mr. WIGGINS. In many parts of this country, sheriffs are elected. I am not aware of any police officers or police chiefs who are elected, but perhaps there are in some places. Would it bother you, would you be concerned about the possibility of an elected sheriff imposing an undue pressure, coercive pressure, upon his personnel to further his election? Can you imagine a sheriff who would not have a bumper sticker to support his boss? Of course, he would only put that on his private automobile while he is off duty but——

Mr. BIAGGI. I have seen police officers all over the country with bumper stickers really on their cars, which is the family car, but the problem was raised yesterday by the chairman, and not quite in that frame. But, I am thinking in terms of the larger municipalities. But, I think we are talking about 1973. The chairman raised the point that a committeeman might exert undue influence. I responded that I thought he was giving the committeeman more credit for the position than it was entitled to and the prestige. But, be as it may, this is one area that, frankly, I know is somewhat controversial.

Now, in the city of New York, the firemen were prohibited from participating in political activities until this year. This year there was legislation which now permits them to belong to political clubs and participate in political activities. I feel that every person in the country should be permitted to participate in political activities.

If we talk in terms of the last 10 or 20 years, we have been talking in terms of getting the poor involved, the illiterate involved, and we have amended our laws where they are now even required to take examinations any more or literacy tests to participate in voting. Now, we do that for everyone else in the country and we cut out a vast segment, a responsible segment, a segment with a very definite stake in the affairs of our Nation by a prohibition on this.

Mr. WIGGINS. I gather the answer to my question is that you do not feel that an employer, such as a sheriff, would exert undue influence upon his employees, the deputies, if he were standing for reelection?

Mr. BIAGGI. Well, it would depend upon, frankly, who he was, how the deputies were employed. Are they appointees or civil service? If they are civil service, I think that his position or his influence would depend purely on his personal relationship rather than on the position of sheriff.

Mr. WIGGINS. And if they are not?

Mr. EILBERG. Mr. Wiggins, I think we should answer the quorum call and then continue.

May I tell you that the hearings will resume in H–128, which is opposite the Members' dining room, so that we will not have the distance to travel back and forth. It is a small room, and I doubt that we can accommodate everyone that is in this room here. So, I am hoping that those who are witnesses or only those who are immediately concerned with the issues before us or the issues to be raised shortly with regard to the other matter will attempt to stay within the room. The room is just too small to accommodate everybody, and I hope everyone will just use their good judgment. So, after we get through voting, we will go right to H–128, which is opposite the Members' dining room.

[Short recess.]

Mr. Eilberg. Ladies and gentlemen, the hearing is resumed.

Mr. Wiggins. Congressman Biaggi, I should like to discuss now——

Mr. Biaggi. Mr. Wiggins, before we go on, I would like permission to answer a previous question on whether sheriffs or police officers should run for office. The fact is, I am advised, that it has occurred. One man became the mayor of the city of Milwaukee while he was still a policeman and Wisconsin permits police officers to hold office. I think in your State, who is a police officer, who is a councilman. The fact that it has occurred, without disrupting normal order of events or violating any area that we might otherwise be concerned about if testimony unto itself.

Bear in mind that this activity must be confined to off-duty hours and while we are talking about that, the police officer is part of the whole law enforcement picture. Now, he is just one segment of it. We have the prosecutor's office, a very important segment. There is no prohibition on them. There is the U.S. Attorney General's Office and no prohibition. I think on every other segment of the whole law enforcement picture, they are not burdened with this prohibition. Only the police officer.

Mr. Wiggins. All right. Now, I would like to turn to paragraph B of the bill of rights which commences on page 3 of the bill, and particularly that major paragraph which deals with the rights of officers while under investigation. In the succeeding subparagraphs, it specifies certain procedures which are to be followed during the investigation of a police officer. I direct your attention to the language which begins on line 18, on page 3. You can follow it with me. I am on line 18. It is as follows:

"Whenever a law enforcement officer is under investigation or subject to interrogation by members of his or any other investigative agency, for any reason, which could lead to disciplinary action" and so forth.

My first inquiry is, who is to conduct the investigation which you envisage? Is this to be an internal police investigation or is it to apply as well to any investigation? I am curious about that because you need the language "or any other investigative agency."

Mr. Biaggi. It would appear to me that this would apply to the broader picture. You are talking in terms of the rights of an individual, and I think for the most part you will find, in practice, that it will be dealing with internal affairs. But, as far as the legislation is concerned, it deals with the broad picture. However, the problem is virtually nonexistent outside the various departments.

Mr. Wiggins. Would it include an investigation in which the district attorney is the principal investigator?

Mr. Biaggi. I could not see any reason why it should not.

Mr. Wiggins. The state attorney in some States is the attorney general and often conducts inquiries with respect to local police corruption and related problems. Would it apply to investigations at that level as well?

Mr. Biaggi. I would think it would apply. I should not say "I think." The purpose of the legislation is to protect the right of the individual and that right goes with him everywhere he is, and any investigation would have to, that right would have to be protected.

Mr. Wiggins. Then I understand that your meaning on line 20 is to make it broadly apply to all investigative agencies reviewing the conduct of the law enforcement officers which could lead for any reason, to disciplinary action or other types of punishment?

Mr. Biaggi. That is right.

Mr. Wiggins. All right. That interpretation is important as we both proceed now through the subdivisions.

On the next page, subparagraph 2——

Mr. Eilberg. What page, Mr. Wiggins?

Mr. Wiggins. Page 4. It states: "The investigation shall take place either at the office of the commander of the investigating officer or at the office of the local precinct or police unit."

Now, is that a realistic requirement if we are talking about the district attorney conducting an investigation?

Mr. Biaggi. Well, in response to your initial question, you will note my response was that for the most part, practically speaking, that most of these investigations would be internal. But, there would be occasions where you have a broader situation and I think that would be minimal. It would be minimal in effect as far as the district attorney is concerned. What happens in New York? Let us talk in terms of that large municipality and we have district attorneys and assistants come to the precincts, but it is no hardship to go to the district attorney's office.

Mr. Wiggins. Well, I understand, but the legislation requires that it be conducted in another place. I wonder if it would do great violence to your bill if we were to confine this section B to internal investigations and to exclude all of the possible grand jury, DA, U.S. attorney, all of the other possible investigative agencies which might get involved?

Mr. Biaggi. Probably not. I do think it would do too much violence because our concern here is, for the most part, internal.

Mr. Wiggins. In subparagraph (3) on page 4, you say that the "questions shall be asked of one interrogator only." Why do you require that?

Mr. Biaggi. Because, envision, if you will, the old grilling system where the police officer or officers in yesteryear would get a suspect, put him under the hot lights and have a half dozen people shooting questions at him, and it created confusion and was ruled out as a matter of practice. It cannot be done to a suspect today and if it cannot be done to the suspect, why should it be permitted to the police officer?

Mr. Wiggins. Is that the law? Is it a matter of constitutional law that a suspect may be interrogated only by one interrogator?

Mr. Biaggi. Well, I do not know if it is constitutional law, but, as a matter of practice, it does not occur any more. I think there are court decisions, Mr. Wiggins, that say that that is oppressive.

Mr. Wiggins. Would it do great violence to your bill if we were to say that the interrogation shall be conducted in a reasonable manner? To be too specific now and say that it is only one interrogator leads to undesirable consequences.

Mr. Biaggi. Let me respond to that. I said that I believe, that as a matter of court decision and I am informed that it is part of the *Miranda* decision, where you should not have more than one interrogator at a time. But, for the record, and for your own information, I will provide a full reply for you.

Mr. WIGGINS. Well, OK. I would like the reply to focus then on whether or not it would do violence to your purpose if we were to mandate only that the interrogation be conducted in a reasonable manner.

Mr. BIAGGI. Well, as legislators, I would have to agree that that is a modified form, and if that were implemented properly, I could find no fault with it. But, I am talking in terms of the overzealous investigator who construes reasonableness to fit his purpose. That is my concern.

Mr. WIGGINS. Let us go now to paragraphs 4 and 5, and I will try to conclude on those.

Mr. BIAGGI. Where is that?

Mr. WIGGINS. Paragraphs 4 and 5 on page 4. Basically, these two paragraphs when read together require that the officer under investigation be informed of the names of the complainants, and if the complainant be a civilian against the police officer, then that complaint shall be duly sworn to and, presumptively, therefore, be in writing, before an official authorized to administer oaths. Now, it seems to me that this would rule out inquiries based upon anonymous tips which may come to the attention of the police. Is that not a possibility?

Mr. BIAGGI. No, not really, because anonymous tips and we realize that they are an important source of information, could be acted upon by the internal affairs unit of any police department with independent investigation, which it ordinarily requires anyway. As a result of that, if they are successful, they would uncover or disclose facts that would make up the case proper and would sustain the initial tip.

Mr. WIGGINS. But, they would not be able to talk to the police officer. They may be able to investigate related matters, but they would not be able to go to the man who is apt to know the most and ask him questions, would they?

Mr. BIAGGI. That is true. No, they could ask him questions, but if there are complaints, if there is a complaint, the name of the complainant must be made available, and I think that is part of the procedure in New York now. Not necessarily the address, that is not important. And the fact that we have—you are talking in terms of the welfare of a police officer, his whole life, his career.

Mr. WIGGINS. Let me give you a more specific instance.

Let us suppose the New York Times carried an exposé on corruption in the New York police department, and let us say they have zeroed in on several precincts. Now, surely the police department should respond to that kind of a public exposé by questioning the officers who are assigned to that precinct. How could they do so without going to the newspaper and asking for a sworn complaint, asking that they identify their sources under this legislation?

Mr. BIAGGI. Well, the Times would be the source at that point and the Times would be the complainant at that point. The independent investigation would disclose facts or not fail to disclose facts that either sustain or fail to.

Mr. WIGGINS. Is it not unrealistic to believe that you would not get a sworn statement out of the New York Times for any reason, at least, without taking it to the U.S. Supreme Court?

Mr. Biaggi. Well, I do not know about the integrity of the New York Times. But they, if they print it, they would have to, at least, confirm the fact that they printed it and that should be sufficient.

Mr. Wiggins. That would not comply with your requirements that it be a sworn statement.

Mr. Biaggi. Well, the purpose of that sworn statement aspect, Mr. Wiggins, is to the whole proceedings, at least from the complainant's point of view, a sense of responsibility so that they would not just conjure up fabrications and subject the police officers to needless harassment, because we know we have an awful lot of that, people just explode at the policeman for one reason or another, seek reprisal as a result of inappropriate official conduct, and start a series of harassing measures.

Mr. Wiggins. I appreciate that as your objective, and I support that as an objective. But, we are becoming awfully rigid here in paragraphs 4 and 5 in implementing that objective to the extent that it may be impossible for a police department to conduct what amounts to a general investigation of police misconduct because that would, of necessity, involve interrogating police officers which, under this requirement of the law, would mandate that the sworn statement be in the hands of the interrogator.

Mr. Biaggi. Well, perhaps, we could modify that section. It is not our purpose to impede investigations. It is just our purpose to see that the rights of the police officer are protected in the process of an investigation.

Mr. Wiggins. Well, Mr. Chairman, I know that there are other witnesses waiting to testify on other matters, and I will comply with your suggestion that I propound some written questions to Mr. Biaggi.

Mr. Eilberg. Congressman Biaggi, would that be satisfactory to you?

Mr. Biaggi. Oh, sure.

Mr. Eilberg. There are many other questions that Congressman Wiggins would like to ask. There are witnesses who have traveled quite a distance, and we would like to get to that hearing today as well, if we possibly can. And I would appreciate very much if you would propound them and if you would respond to them in a reasonable period of time. And Ms. Holtzman has a number of questions that she would like to ask, and I hope you consider that we have witnesses here from a distance.

Ms. Holtzman. I understand, so I will try to be as brief as possible. I am also disturbed by some of the questions or provisions that Mr. Wiggins pointed to, and I, again, want to draw your attention to section 4 on page 4, where you require again that the law enforcement officer shall be informed of the names of all complainants and it seems to be a well-recognized privilege in the Federal law now, I think in most States, that an informer, the Government may protect the name of an informer in, let us say, certain drug investigations. Would your bill require if an informer reported an illegal drug activity on the part of a policeman that before an investigation of the policeman took place, the policeman would be required to be advised of that person's name?

Mr. Biaggi. Well, I do not know why you bring drug investigations into it.

Ms. HOLTZMAN. Because I am concerned about the scope of the statutory provision here.

Mr. BIAGGI. Currently in New York City, Ms. Holtzman the name of the complainant is issued by the new bill of rights so there is no problem with it.

Ms. HOLTZMAN. I would think there would be a conflict with existing Federal law and I——

Mr. BIAGGI. Well, you are talking in terms of an informer. I would not equate an informer with a complainant——

Ms. HOLTZMAN. Well, I do not know what the word complainant means. Is it defined in this bill, Mr. Biaggi?

Mr. BIAGGI. No. An informer just brings information. A complainant, in fact, brings a charge.

Ms. HOLTZMAN. Do we have a definition of complainant in this legislation?

Mr. BIAGGI. No, we do not.

Ms. HOLTZMAN. Let me just make the point that I am as concerned as you are about fairness in administrative proceedings, and I am not in favor of duress and harassment of anyone. But, I am concerned about legislation that goes further than is required to insure that kind of fairness, and that is the reason I raise these questions because I think it might. I think the term "investigatory agency" would certainly apply to the Federal Bureau of Investigation, and I am concerned about the fact that they might have to reveal names of certain informers in order to investigate legitimate criminal charges against police officers.

Mr. BIAGGI. Well, in that case, it would seem to me that the complainant might be the investigatory agency rather than their source. But, it is a good point and it is not our purpose——

Ms. HOLTZMAN. I see. So, you would consider——

Mr. BIAGGI. We share the same view, sure.

Ms. HOLTZMAN. You might consider a modification of this provision to accommodate that?

Mr. BIAGGI. Sure. We have an objective and I think the objective is understood. And we are not offering the bill as alpha and omega; that is why we have this legislative process.

Ms. HOLTZMAN. OK. And I have the same concern about section 7 on page 5, the last sentence of which is: "No promise or reward shall be made as an inducement to answering any questions."

Now, let us assume that the District Attorney or a member of the FBI, or the U.S. Attorney has a number of charges that it may prefer against the police officer and, in return, for not prosecuting on all charges may seek to get a promise that the police officer will testify about certain matters. Is that prohibited under section 7? It would seem to me it would be.

Mr. BIAGGI. I do not think that is included. That refers back to the question and the concern that Mr. Wiggins had, whether this was internally, and I would say that this was involved in internal activities.

Ms. HOLTZMAN. I see. So, you would narrow the definition of investigatory agency?

Mr. BIAGGI. This would not apply to the prosecutor's office and the like and the court system. This is very early, at the very early stages in the relationship, and has nothing whatsoever to do with the phases that we are talking about.

Ms. HOLTZMAN. Do you think the provisions in this bill would affect, let us say, the recent attempts by Police Commissioner Cawley in New York City to try to develop a psychological profile for some police officers who were unduly prone to violence and to require, let us say, a police officer to take certain tests? Since the taking of such tests could lead to demotion, dismissal, would all of these provisions apply?

Mr. BIAGGI. I do not see those, really, but I will talk to that.

Mr. WIGGINS. Well, in effect, if the gentlelady would yield, subparagraph 10 would, apparently, deal expressly with that type of matter. The interrogation under those circumstances would relate to the officer's fitness for law enforcement service and then under those circumstances, he would be permitted an attorney to be present during such investigation.

Ms. HOLTZMAN. Before he took the test, would that be your interpretation?

Mr. WIGGINS. That is what it says, yes.

Mr. BIAGGI. That would come under medical. That does not come under the investigatory, in my judgment, it would be a medical analysis, and a psychological screening, and I do not think anybody had that within their contemplation as far as the psychological imbalance, if you will. I am sure that a man who is not subject to corrective action should not be on the force. I think that is the universal opinion.

Now, let us talk to Commissioner Cawley's proposal. It is not a new proposal. Almost every Commissioner has set up one after every difficult incident.

Ms. HOLTZMAN. I am not talking to the merits of the proposal but what I am talking to is whether the language of your bill is so broad, so as to, in essence, preclude the imposition of such tests by a local police agency and require that before the policeman took the test, he would have to be, for example, represented by counsel.

Mr. BIAGGI. I think the record should show that it was never within the contemplation of myself or anyone involved in the preparation of the bill, and that phase of it would come under medical analysis in the medical area of the police department, and should not relate, in any way, to this bill.

Ms. HOLTZMAN. I just have two more areas, and I will try to be very brief. Turning to page 6, line 3, where you say that the "law enforcement officer shall have the right and be given assistance when requested to bring civil suits against any person or persons" et cetra. Does that mean that a law enforcement officer would be provided with counsel, for example, by the city, or the municipality or the State, for bringing civil suits?

Mr. BIAGGI. Yes.

Ms. HOLTZMAN. At the expense of the city?

Mr. BIAGGI. Absolutely. Let us continue on:

"For abridgement of his civil rights arising out of the officer's performance of official duties." Absolutely.

Mr. WIGGINS. Even in a suit against the city?

Mr. BIAGGI. Well, it would not be a question of a suit against the city, no.

Mr. WIGGINS. But, it well might.

Mr. BIAGGI. It spells out there civil suit against any person, group of persons, organization or corporation, or the head of such organizations or corporations. I do not see where any political subdivision is mentioned or even implied.

Ms. HOLTZMAN. Suppose it were against the police department?

Mr. BIAGGI. Well, that is part of misunderstanding. I do not see it. It was not attempted anyway. It is a question of the individual's civil rights.

Ms. HOLTZMAN. Well, what would be the justification for requiring the municipality or the State government to pay for counsel in any civil damage action by a police officer?

Mr. BIAGGI. Largely, it is a question of responding where he is an agent of the city, doing a job for the city and, in the process, his civil rights are abrogated and I think the responsibility continues. The fact of the matter is that provision really was—they have the right to do that now, to sue.

Ms. HOLTZMAN. Well, of course, I mean——

Mr. BIAGGI. But why we incorporate that is to emphasize that right and let them know or at least provide an additional responsibility to provide assistance to them.

Ms. HOLTZMAN. Yes. Well, but you see the language of this section is drafted in such a way that it says that a law enforcement officer shall be given assistance or have the right to be given assistance, when he brings a civil suit for damages suffered. "Damages suffered" is not qualified by the phrase arising out of the performance of official duties. Does this mean any time a police officer sues?

Mr. BIAGGI. No. Let us go a little farther. "Damages suffered" either pecuniary or otherwise for abridgement of their civil rights arising out of the officer's." That is the qualifying word, that is the qualifying phrase, "out of the officer's performance of the official duties." That would be the only area in which this thing would become operative.

Ms. HOLTZMAN. And you think it would not include subdivisions of the police department or——

Mr. BIAGGI. Oh, no.

Ms. HOLTZMAN. And I also have a question about the disclosure of finances provision.

Mr. BIAGGI. Yes.

Ms. HOLTZMAN. What is the rationale for prohibiting the disclosure of finances by a police officer?

Mr. BIAGGI. We responded to that yesterday. I know you raised that question once before. To begin with, let us clear the air as far as that is concerned. It does not apply to any proper investigation and whether the propriety or impropriety of a member's official conduct is involved or any investigation so far as corruption is concerned. The rationale here is this is a frightening—our rationale, at least, we feel is fear and the rationale in the administration is for this rule that what they do now is distribute questionnaires, have them filled out, and on the basis of these questionnaires, they determine a man's wealth or poverty, the relative degrees of wealth, at least, and then they make determination for assignment. Now, you are talking about value judgments. If a man is poor, they say, well, he is poor because he is absolutely honest and, hence, we can put him in that position. Another evaluator may look at that same questionnaire and say, well, the man is poor, hence, we do not give him that position because he is subject to the temptations. Do you follow now? Now, if you say a man has some degree of wealth, whether it be inheritance, wise investments, or whatever, well, they say, well, where did he get it from?

They do not bother to go into the investigation and find out where his wealth is or has been obtained from. It is that kind of thing which is the reason for this. It is a rule, it is a practice in some police departments to use this as a basis for assignments and it is the most frustrating and aggravating thing, and the most unjust criteria that I have ever seen in my life. It has no relationship with corruption whatsoever. As far as corruption is concerned, they have issued questionnaires and they will continue. They should continue.

Mr. Wiggins. Would the gentlelady yield for a question?

Ms. Holtzman. Yes.

Mr. Wiggins. I am puzzled by some language on lines 14 and 15 of the page, which relates to the section now under discussion. Basically, the section says that no law enforcement officer shall be required to disclose his assets unless, and now the language that bothers me "unless such information"—"such information" must be referring back to the assets—"is obtained under proper legal procedures." Now, what do you mean by that? If he is asked to fill out a questionnaire, is that improper?

Mr. Biaggi. No; that is proper but not with relation to personnel assignments. I am making this provision so have a very narrow application. It is becoming a practice in several departments.

Mr. Wiggins. "With respect to assignments or other personnel action" would seem to include any action, including disciplinary action. That is personnel action with respect to an employee. That is an odd phrase, "unless such information is obtained under proper legal procedures." I do not quite understand what you are getting at.

Mr. Eilberg. Ms. Holtzman?

Ms. Holtzman. Yes. I think following up, the statutory construction here "or unless such information tends to indicate a conflict of interest." Well, the information is his property, income, assets, etc., which you cannot have to begin with, so how do you determine whether——

Mr. Biaggi. Why can't you have them?

Ms. Holtzman. How do you get this? How do you determine that there is, or suspect that there is a conflict of interest? You have to know something about his income. But, you cannot find out his income under this unless you're either going through "appropriate legal procedures," whatever that is, or unless you already have information showing a conflict.

Mr. Biaggi. Let us talk to something basic. This is in terms of the privacy of every individual. What right does an Agency have to go into the background of every employee, as far as their personal wealth is concerned, or their personal position is concerned without reason? Now, I am not going to include everyone. You would resent it, I would resent it, unless there was some valid reason. Now, if there is a reason, if there is an allegation of corruption, well, that is a valid reason in my judgment. But, just to distribute questionnaires to every member for the purpose of assessing their wealth for determining their background or their personal wealth, to me I find objectionable as a matter of a right of privacy.

Ms. Holtzman. Well, but suppose in some police department, there are allegations of widespread corruption?

Mr. Biaggi. Well, what is widespread, we keep hearing about that.

Ms. Holtzman. I am not saying the allegations are true or whatever, but, let us say, in a small rural area or a small municipality, there are allegations that the entire police department is corrupt. Let us just make that hypothesis. In such circumstances, the investigatory agencies would have to obtain a court order in order to get this information, or what would they have to do?

Mr. Biaggi. Well, they have not in the past. They have been able to distribute questionnaires and it has been sustained in court that they must be returned, and there is no problem. That was a practice that was initiated as a new idea and was tested in the court and the court sustained the right of a police department to distribute those questionnaires and have them returned filled out. I do not think it is a question—that is a proper procedure.

Ms. Holtzman. What I am getting at is perhaps by this provision we are hamstringing local municipalities and State governments in their attempts to insure that police agencies are honest and that police officers do not engage in corruption.

Mr. Biaggi. It is not the purpose of the provision, and I appreciate that, and you and I were thinking alike—it is just a question of probably how we could rephrase it so that it could obtain our objective. As I said, the application of this provision is very narrow, extremely narrow, absolutely only relationship to personnel assignments. Now, it is no other and Mr. Wiggins raised the point other personnel actions and I think there is merit to that, in my judgment, and I agree. I find it a very frustrating practice and wrong, basically and fundamentally wrong, the practice of making personnel assignments, determining them based on the wealth or relative wealth of individuals. As far as the larger picture in practice and the use of this questionnaire with relation to corruption or anything else, we have no conflict. I agree so perhaps this can be reworded in a way that you could deal with the issue of my more narrow concern here.

Ms. Holtzman. If I may ask just one final question?

Mr. Eilberg. I do not want to limit you and if there are other questions that occur to you after this morning, I wish you would submit them to the Congressman.

Ms. Holtzman. I will be happy to do that then in writing. I will conclude my questioning at this point.

Mr. Eilberg. Would you mind very much because we want to be as considerate as we can to everyone present.

Congressman Biaggi, I think we have finished with you for the moment.

And our concluding witness on this round will be former Congressman Mike McKevitt, Assistant Attorney General, and a former colleague on the subcommittee. Mike, would you step forward?

Mr. Biaggi. Thank you, gentlemen.

Mr. Eilberg. Thank you very much. You are welcome to stay, Congressman Biaggi.

TESTIMONY OF HON. JAMES D. (MIKE) McKEVITT, ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE

Mr. McKevitt. May I use the desk? I have a variety of materials here by the questioning of previous witnesses, such as figures for the benefits for the FBI personnel and benefits for military killed in the line of duty, which I will be glad to insert in the record if the subcommittee is interested.

In addition, I would like to hastily read through my statement and if the chairman of the subcommittee wishes, be subject to questions as I proceed.

Mr. Eilberg. You know, of course, in the consideration of any bill, the administration position often becomes very important and so any observations you can make as to the feasibility or practicality or advisability from your point of view of any of the provisions of any of the bills before us, would be appreciated.

Mr. McKevitt. OK. Normally, as I say, I like to speak extemporaneously. Because of the ramifications here, I would like to go through the statement and add a little to it, and have questions throughout.

It is a pleasure to be here today to discuss the views of the Department of Justice on the bills now pending before your subcommittee to provide benefits to the survivors of public safety officers. In addition, I will present the Department's position on the legislation to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several States.

With respect to survivors' benefits for public safety officers, the three bills under consideration today—H.R. 12, introduced by Mr. Rodino; H.R. 6449, the administration's proposal; and S. 15, the Senate-passed bill—each provides for the payment of $50,000 to the dependent survivors of public safety officers killed in the line of duty. H.R. 6449 and S. 15 would require that the death be the result of a criminal act or apparent criminal act, while H.R. 12 would cover accidental deaths in a wide variety of circumstances. For the most part, each bill would provide coverage for the same categories of public safety officers; namely, police and firemen, correctional officers, and certain court personnel.

As you know, Mr. Chairman, proposals of this nature have been before the Congress for about 2 years. The first was sponsored by the administration and introduced in June 1971, as H.R. 9139 and S. 2087. The latter, as amended, passed the Senate, in September 1972, and a House bill sponsored by Mr. Rodino—H.R. 16932—passed in October of last year. Even though the members of the conference committee reached agreement, no law was enacted during the 92d Congress.

The purpose of the bills of course was to fashion a Federal response to the substantial, nationwide problem of police murders. During 1971, the next year that the death gratuity proposal originated, 126 law enforcement officers died as a result of felonious activity. Last year, 112 police were killed by criminal acts, and for the first 6 months this year, about 70 have been slain.

Mr. Eilberg. May I interrupt?

Mr. McKevitt. Yes.

Mr. EILBERG. Do you have any figures? And when you use law enforcement officers, you mean police officers—is that correct?

Mr. McKEVITT. Yes. These are police officers. The figures do not pick up firemen, correctional or court personnel as defined by our bill. who would be in a potentially dangerous situation.

Mr. EILBERG. Could you attempt to develop the figures in these other categories for us?

Mr. McKEVITT. Yes, certainly. We will be glad to attempt to do that.

Mr. EILBERG. Thank you.

Mr. McKEVITT. I think that these figures are also important with respect to computing the amount of money that would be going into benefit payments and the interim payments of $3.000 which are afforded in our bill.

Proceeding with my statement:

While no amount of money will solve this terrible problem. a $50.000 gratuity could go a long way toward alleviating the financial shock which often accompanies the sudden death of the wage earner. The administration initially chose such an approach because it was determined that death benefits vary from State to State. and in some cases do not exist at all. The lump-sum payment was proposed as an attempt to provide a Federal base or floor for such benefits. so that all survivors would receive adequate financial support regardless of the inadequacy or nonexistence of State or local programs.

This was deemed to be appropriate action for the Federal Government since the murders were occurring across the Nation without regard to State boundaries. and since a lump-sum payment would in no way interfere with the prerogatives of State and local governments with respect to routine employment benefits.

Despite the Department's strong support for the concept of a death gratuity. there are significant differences among the three bills which I would like to bring to the subcommittee's attention. For the reasons I will discuss. I believe that H.R. 6449. the administration's proposal. embodies the best means of achieving the objective.

While the bills provide for a death gratuity for public safety officers killed in the line of duty. H.R. 6449 and S. 15 would require that the death be the result of a criminal act or apparent criminal act. whereas H.R. 12 would not. The Department believes that such a requirement is consistent with Federal responsibility in this area. We are of the opinion that the proposal should be designed to deal solely with the slaying of public safety officers and not with accidental deaths. Accidental death is a hazard of many types of employment, and we are aware of no rationale which would suggest Federal intervention in these situations. Providing survivor's benefits for those who are killed accidentally should be the responsibility of the employer in the same manner as other employment benefits.

Mr. EILBERG. Can I just interrupt?

Mr. McKEVITT. Yes, Mr. Chairman.

Mr. EILBERG. Would you also include the kind of situation where there is a chase in which a police officer is attempting to catch an escaped felon or one who has committed. let us say. a felony in his view and has an automobile accident on the way and dies as a result of those injuries. which would be an accidental death?

Mr. McKEVITT. Well, is that an accidental death or is that involved with criminal act?

Mr. EILBERG. Well, I am asking you the question.

Mr. McKevitt. My personal feeling is that it would be more in the nature of a continuing act, and it has been my experience as a district attorney in Denver that these situations were treated as such.

The murdering of public safety officers, however, is an act which attacks the very essence of a stable society and puts in jeopardy the well-being of our country. For this reason we believe that Federal assistance is appropriate in these limited instances.

I would like to comment also, Mr. Chairman, and Members of this subcommittee, that sometimes there is a lack of concern by State and local government in this regard. I think they do not provide for adequate insurance benefits and should be given an incentive to pursue that option or, as I consider it, an obligation.

I would also like to point out that the administration's bill would eliminate any duplication of coverage in situations where the circumstances of an officer's death would make his survivors eligible for assistance from more than one Federal program. Each bill under consideration today would provide that the death gratuity would be in addition to any other benefits that might be due the survivors. H.R. 6449, and S. 15, to a limited degree, would make specific exceptions to this rule to avoid any potential inequities.

As a footnote, S. 15 makes an exception only insofar as present District of Columbia law is concerned. H.R. 6449, the administration proposal, is all-encompassing and would make an equitable approach across the board. As an example, H.R. 6449 would reduce the $50,000 benefit by any amount authorized by 5 U.S.C. 8101, which provides for the awarding of Federal employees' compensation benefits to local law enforcement officers killed while performing a federally related function, such as apprehending a person wanted for a Federal offense. If the death gratuity were not reduced by the amount of the benefits under section 8191, a situation could arise where an officer would be eligible for duplicate coverage. This would create an inequity with respect to public safety officers who qualify under only one program. Therefore, we would recommend that the subcommittee consider this point in its deliberations.

Permit me to mention in addition that H.R. 6449 and S. 15 each provide for the awarding of interim benefits of up to $3.000 prior to a determination by LEAA as to whether a final benefit will be paid.

As a footnote here, my experience has been that their is a critical period particularly in the case where there are no other benefits forthcoming, and it is immediately necessary to provide living expenses and funeral expenses for example. For this reason, the administration's proposes to have this interim payment, somewhat in following the footsteps of the FBI, where they make the immediate payment upon the death of the agent.

Returning to my statement now, we believe that such a provision is worthwhile so as to offset the immediate financial shock that could well occur upon the death of the wage earner. In situations where an ultimate benefit will probably be paid, it would appear reasonable to permit LEAA to provide immediate short term assistance. This interim benefit, of course, would be deducted from the $50.000, and could be recovered in cases whene a final award is not made. Under H.R. 6449, LEAA would be required to consider the hardship that might result if repayment were ordered.

I would like to point out here that considering the fact that we have about 100 or 125 officers feloniously killed each year in addition, of course, a certain number of firemen and other public safety officers, I think we would find very few cases, if any, where there would be a mistaken act by the department or LEAA in making an interim payment.

What is your pleasure, Mr. Chairman?

Mr. Eilberg. Why don't we answer the quorum call?

[Short recess.]

Mr. Eilberg. Do you want to resume?

Mr. McKevitt. All right, Mr. Chairman.

The administration's proposal, unlike both H.R. 12 and S. 15, also establishes the basic procedural framework which would apply in all cases where benefits are applied for. Under H.R. 6449, the applicant would have to notify the appropriate State official, who, in turn, would be required to inform LEAA of the pendency of an investigation of the facts of the case. After the investigation, the State official would then certify the relevant facts to LEAA. LEAA would then make its decision upon the basis of these facts. Thus, while there is nothing unique about this procedure, it would have the benefit of placing the responsibility for the initial investigation and certification upon those officials closest to the events. Such procedures could, of course, be established by regulations, but it would appear useful to outline the basic application process in the statute.

Finally, S. 15 provides that the benefits would become effective and apply to acts and deaths occurring on or after October 17, 1972, the date of the conference report from the 92d Congress on S. 2087. While the Department is sympathetic to the hardships faced by many survivors of public safety officers, we believe that when new benefits are statutorily created they should only apply prospectively unless there is a compelling reason for determining a date for retroactive application. In this case, we are of the opinion that there is no fair way to choose such a date. The choice of any arbitrary date would be inequitable. For this reason, we suggest that fairest resolution of this problem would be to make the benefits apply prospectively only.

Mr. Eilberg. May I interrupt just at that point and ask why you picked that particular date as the effective date as far as any deaths are concerned? Why the date of the conference report?

Mr. McKevitt. No, S. 15 did. Senate 15, which we take issue with.

Mr. Eilberg. Your position is then to apply the benefits prospectively?

Mr. McKevitt. Right. In this case we are of the opinion that there is no fair way to choose such a date. The choice of any arbitrary date would be inequitable. We suggest that the fairest resolution would be to make the benefit apply prospectively only.

Mr. Eilberg. Would you object if we had a retroactive date for any reason? In other words, how strong is your conviction?

Mr. McKevitt. Well, I have two problems. Any date would be arbitrary and, two, of course, you would have a funding problem involved. Of course, this would be also a question for the Office of Management and Budget as well, so I would have those reservations in my mind.

Mr. Eilberg. All right.

Mr. McKevitt. This, Mr. Chairman, completes my discussion of death gratuity legislation. In conclusion, I would like to say that the Department of Justice strongly supports the concept of a $50,000 payment to the survivors of public safety officers killed in the line of duty as the result of a criminal act, and for the reasons I have outlined we believe that H.R. 6449 provides the best approach to the problem.

Before proceeding further, I would like to touch on inquiries that have been made about other agencies and the benefits that are made available.

One inquiry was made as to benefits for FBI agents. The policy as it stands provides for Civil Service Retirement Act benefits, which pay the widow an amount which depends upon her husband's length of service and $85 a month for each child up to 3 children.

In addition, there are Federal employees life insurance benefits which pay the survivors the agent's annual salary, rounded out to the highest thousands plus $2,000.

And the Special Agent's Insurance Fund which pays survivors $20,000. Each agent contributes approximately $80 a year.

SAMBA, the Special Agents Mutual Beneficiary Association which provides $3,000 basic life insurance at no cost, plus optional extra benefits.

In addition, if an FBI agent is murdered in the line of duty, his survivors may choose, and usually do choose in lieu of the civil service annuity, a plan which pays the sole survivor 45 percent of the agent's salary until any remarriage or, if there are children, 40 percent of agent's salary for the widow, plus 15 percent per child up to 5 percent of the annual salary.

In addition, there is the Charles S. Ross Fund, which is a trust fund, established by a wealthy citizen whom the FBI rescued from a kidnapping in the 1930's. This fund gives the survivors of every agent killed in the line of duty in nonaccidental death a $1,500 benefit.

In addition, if the FBI agent is murdered, he also receives double indemnity under SAMBA, which I referred to above.

So far as military personnel who are killed in active service are concerned, they receive a death gratuity ranging from $800 to $3,000, based on the amount of 6 months basic pay. In addition to that, they receive the SGLI, which is their form of insurance now, which varies from $5,000 to $15,000. It can either be $15,000, $10,000 or $5,000. This is a voluntary program and it is dependent upon the benefits paid in.

In addition to these benefits, the surviving spouse and her children would receive monthly benefits from the Veterans' Administration ranging from $184 to $469 a month, depending upon the rank of the individual. Also, survivors are entitled to PX and commissary privileges. This is for the wife and the children and they are also entitled to the medical facilities for the remainder of their lives.

Mr. Eilberg. Well, Mike, before you go on, I just want to ask a couple of questions here, and you may wish to ask your questions at this point, also. Congressman Wiggins.

You favor H.R. 6449, and I do not agree with all of the points that you have outlined; but I agree in principle that we should have a bill providing benefits for next of kin. You have indicated that you would deduct any local benefits that might be provided as a result of the death of the police officer. We may as well face the issue and I think it was raised by Congressman Wiggins yesterday. If we provided the $50,000 benefit, do we not discourage local municipalities from providing any benefits at all or reducing existing benefits. How do you respond to that?

Mr. McKevitt. Well, I can look at it two ways. Whether the glass of water is half full or half empty, I suppose. Yes, you could have an attitude by local councils or State governments who want to reduce their benefits, but on the other hand, I think that the benefits will depend on the pressure applied. I think the Federal Government should supplement local benefits and make them even more beneficial to local personnel.

Mr. Eilberg. So you think that in many cases, if not a majority, that a municipality would be interested in increasing benefits rather than just substituting Federal funds for local gratuity funds?

Mr. McKevitt. I think they should and I think they also should be given a kick in the tail if they don't, because of the fact that just looking to the Federal Government for the total benefits is improper. The whole point of our bill is the fact that there are many local and State governments that have badly neglected and overlooked these types of benefits in the past, and I think for such reason they should be given an incentive.

Mr. Eilberg. I am concerned about the function of and duties of policemen and firemen. They often overlap. If this is true, would it not be inconsistent to provide death benefits to policemen or others who die as a result of a criminal act and, at the same time, exclude the fireman who may die in the performance of his duty?

Mr. McKevitt. Of course, under the administration proposal, it is as a result of criminal act, and since 1966, or 1967, firemen have been subjected to much more hazardous situations where they could die as a result of a criminal act. If you are going to cover deaths from caved-in roofs or these types of situations, you are getting into the inherent risks of the position itself, and there are all different types of risks involved in different jobs. As I see the purpose, it is to protect an individual who dies as the result of a criminal act, at least so far as the administration proposal is concerned.

Mr. Eilberg. Now, another whole area, and I know you have some interest in—the alternative of providing insurance that might be paid for by the police officer. Are you prepared to give us some comments or thoughts, on the insurance approach, rather than a gratuity-type bill?

Mr. McKevitt. I am not prepared to comment at length about it at this time.

Mr. Eilberg. We can agree that this is a highly complex question in itself?

Mr. McKevitt. Very, very much so.

Mr. Eilberg. Mike, can you do a study of this and develop a position on the question of the applicability of insurance as an alternative route and give us a departmental position following the study within a reasonable time?

Mr. McKevitt. If that is what the chairman requests, then I would be glad to.

Mr. EILBERG. I wish that you would relay that as it would be of value to the subcommittee in considering at least all possible or viable alternatives to the approaches that have already been suggested.

Mr. MCKEVITT. I think you raise a good point because there certainly was a vacuum on factual input with respect to insurance in the last session and, for such a reason, I will be more than glad to accommodate your wish, Mr. Chairman.

[Subsequent to the termination of these hearings the following letter was received:]

SEPTEMBER 26, 1973.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The following information is provided in response to several requests for additional information raised by yourself and your colleagues on the Subcommittee when Assistant Attorney General Mike McKevitt testified on behalf of the Department on July 26, 1973, regarding public safety officers' benefits.

Q. What is the position of the Department of Justice regarding a nationwide program of group life insurance for public safety officers?

A. The Department opposes the group life insurance approach referred to above for the following reasons:

1. We are not aware that public safety officers are discriminated against by insurance companies, and therefore, are on an equal footing with other citizens. Moreover, there are existing group life plans currently available to public safety officers and there is no impediment to the expansion of this concept at the state and local level.
2. Any nationwide group life insurance program would be necessarily complex and extremely difficult and costly to administer.
3. We favor the approach taken in H.R. 6449 providing for a death gratuity for public safety officers killed in the line of duty which would be in addition to any other state or local benefit.

Thank you for the opportunity to supplement the testimony of Mr. McKevitt.

Sincerely,

HUGH M. DURHAM,
Chief, Legislative and Legal Section.

Mr. EILBERG. Thank you.

Congressman Wiggins?

Mr. WIGGINS. Thank you, Mr. Chairman. I have a few questions of my friend, Mr. McKevitt. We are always happy to see you here, Mike.

Mr. MCKEVITT. Thank you.

Mr. WIGGINS. Mike, the first question that comes to mind is why the administration endorses this bill, the death benefit bill. I have read your statement with some care attempting to fathom from the language the rationale for Federal involvement in a lump sum gratuity program. You have two lines, or two places in your statement which provides a rationale. On page 3 in the second paragraph you state, "this" and "this" refers to the program "was deemed to be appropriate action for the Federal Government since the murders were occurring across the Nation without regard to State boundaries." That is one rationale.

Now, addressing myself only to that, is the bill which you propose in response to that problem going to do anything to reduce the murders which are occurring across the Nation without regard to State boundaries?

Mr. MCKEVITT. I do not think that it is going to do anything to help reduce the murders. But, I think two things: I think (1) it is certainly going to be a humanitarian effort, and (2) it is going to help in areas of recruitment where you have some speculation about the environment because of the increase in criminal activity and the greater risk to an officer in the line of his duties.

Mr. WIGGINS. All right. I understand your response to be that the first rationale is hardly adequate and you have come up with two more which may be more adequate; namely, recruitment and improving morale.

On page 4, Mike, if you would refer to that, in the middle of the page, you provide another argument. You say, "the murdering of public safety officers, however, is an act which attacks the very essence of a stable society and puts in jeopardy the well-being of our country. For this reason, we believe that Federal assistance is appropriate in these limited circumstances."

Will the bill which you support for this reason——

Mr. McKEVITT. Where are you reading from?

Mr. WIGGINS. I am reading from the middle of page 4 of your statement. You see the paragraph beginning "the murdering of public safety officers?"

Mr. McKEVITT. Yes.

Mr. WIGGINS. It is my view that that contains an argument which you make in major support of the bill, the argument being that the murdering of the police officer, public safety officers put in jeopardy the well-being of our country. And my question then, Mike, is whether or not the bill which you endorse is going to do anything to lessen the jeopardy to our country as a result of murdering of police officers?

Mr. McKEVITT. Well, that is sort of part I of a two-part answer. I do not see where we could expect to solve that, but the fact is that it is going to provide a remedy for a tragedy which continues to exist.

Mr. WIGGINS. You see, I am really trying to pinpoint you and through you, the administration, on the rationale for this bill. I hope you and I can now agree that you cannot support this bill on the theory that it is a law and order bill to minimize the risk to police officers. It has nothing to do with that. Would you not agree with that, Mike?

Mr. McKEVITT. You mean to cut down on the incidence of murdering of police officers?

Mr. WIGGINS. Sure.

Mr. McKEVITT. No, I do not see where that rationale would follow.

Mr. WIGGINS. I agree. Let us accept that and proceed from there. This cannot be supported in terms of minimizing the risk to police officers or minimizing the jeopardy to society occasioned thereby.

Mr. McKEVITT. I want to make sure that we are thinking along the same line. We are talking about the facets of recruitment and we are talking about a Federal policy particularly in cases where you do have State and local governments totally unprepared to cover these particular situations, and people who are appalled by it. It is the position of the administration to say something should be done about it, to give some benefit there because it is an extraordinary situation.

Mr. WIGGINS. To be done about what?

Mr. McKEVITT. To take care of the survivors of the public safety officer who was killed by a criminal act.

Mr. WIGGINS. Now, that is the third rationale. And to restate them, the ones that I think are truly relevant are recruitment, morale and they are related, and the provision for survivors. Now, those are three justifiable or at least, arguable, reasons for supporting this bill.

Mr. McKEVITT. Yes.

Mr. WIGGINS. I will not go through the arguments as to why they may be or may not be strong arguments, but I just want to set to one side the arguments made in your prepared statement that the justification for the bill is the fact that police officers are exposed to great risks because we are not going to do anything about that problem in this bill. I hope you would agree with that.

Mr. McKEVITT. How do you differentiate that from the three points you just elicited?

Mr. WIGGINS. Well, if you had made those three points in your prepared statement, then I would think you would have made a justifiable argument. But, since you did not, I was trying to elicit what your reasons are, and now you have stated them and I will accept them, although not necessarily agree with them. I do not necessarily agree on the value to be placed upon them, but I just want to get in focus what the real reasons for the support of this bill by the administration are. I do not have any hesitancy in saying, in my opinion, that the real reason for the support of this bill by the administration is the President promised his support just before the election. I have no doubt that that is the real reason.

Mr. McKEVITT. Well, are you stating that it was purely a political reason?

Mr. WIGGINS. Yes.

Mr. McKEVITT. Well, you know, the Congress made a lot of promises just before the election, too.

Mr. WIGGINS. Right. And I think——

Mr. McKEVITT. Sometimes one of the nice things about elections, though, is that it brings about these actions and whether that be the case or not, I do not concede that that is the prime motivation in this, which comes from the President's promise, but I think the point is that I think it is something that is needed.

Mr. WIGGINS. All right.

Mr. EILBERG. Would the gentleman yield?

Mr. WIGGINS. Of course.

Mr. EILBERG. With regard to your very first question, the language on page 3, Mike—"this was deemed to be appropriate action for the Federal Government since the murders were occurring across the Nation, without regard to State boundaries"—I take it by that you are contemplating the common situation where someone from Florida might kill someone in Pennsylvania, and that these murders occur without regard to State lines. The existence of a State line is accidental in terms of the parties to the murder, and the person who is murdered. Is that what you mean there?

Mr. McKEVITT. Well, it was a double meaning. No. 1, that fact is taken into consideration and No. 2, the inadequate benefits that are now available.

Mr. WIGGINS. What is this argument, Mike, about murders being an interstate problem? Burglaries are interstate in the sense that they occur all over the country but the harm to an individual is a very personal, local problem. It occurs only in one place.

Mr. McKevitt. Yes. But what I am touching on is the fact that you have an involvement in a State by the police agencies working interstate, No. 1, or No. 2, inadequacies between different States and local governments. But I do not think it touches upon it and I think it is a small point. I go back to the original three things under the Wiggins theory.

Mr. Wiggins. I think you ought to get back to those three because these are useless arguments in my opinion. Now, let us proceed to something more useful.

Mr. McKevitt. Well, let us wait.

Mr. Wiggins. We can proceed to something more useful.

Mike. I want to ask, through the Chairman, is it possible for you to develop statistics to respond to the suggestion which several prior witnesses have made, that in order to do justice to survivors, one of your three arguments, coverage should extend to all officers who are killed in the line of duty and not merely those who may be killed as a result of a criminal act. Now, I realize the administration does not support that. but the proposition is before the subcommittee and it would involve greater cost figures. I do not know that we have had data to analyze the impact of that recommendation. If the Department could help us in that direction, I would hope the Chairman would ask.

Mr. Eilberg. I certainly would agree with that and I hope you would be able to do that somehow.

Mr. McKevitt. I would be more than glad to.

Mr. Wiggins. And a second request along those very lines. Last year while you were on the subcommittee we had, basically, Chairman Rodino's bill and the insurance fund proposal. As I recall, one other which dealt with a matching-fund-type program, that is, a Federal contribution to death payments made by units of local government, equal or some variation of that.

Mr. McKevitt. Yes.

Mr. Wiggins. If the administration is going to consider an alternative, I hope, Mr. Chairman, the witness will be asked to consider that alternative, too, and give us his views on it. If there is something wrong with the Federal matching grant, as distinguished from a 100-percent gratuity?

Mr. McKevitt. Was your last statement a question of, is there something wrong?

Mr. Wiggins. I do not expect you to respond, unless you are ready to.

Mr. McKevitt. I just want to know if your last statement was a question or a statement?

Mr. Wiggins. Yes. I intended it to be a question.

Mr. McKevitt. Okay.

Mr. Wiggins. But a question you could answer later after reflection and the accumulation of any material that you would like.

Mr. McKevitt. Yes. Sure.

Mr. Wiggins. And included in the material that you are going to submit?

Mr. McKevitt. I will be very glad to.

Mr. Eilberg. I would just like to point out that I recognize that this will be a complex and difficult job for you because you will have to find out how many people are engaged in these various activities and develop life expectancy and probability of death and what the premiums might be. This is the kind of information that we are seeking and it is a big burden that we are asking. And we hope that if not you, perhaps some other agency you can recommend, can do it as quickly as possible for us.

Mr. McKevitt. Mr. Chairman, your subcommittee is moving with such dispatch on so many topics, that we are going to have to call on several agencies to be prepared for backup; and coming up behind this one you have the victims of crime legislation.

Mr. Eilberg. I am glad you are here working with us because I know you can keep up the pace.

Mr. Wiggins. Mike, I have only one more question and, that is, the difference in treatment of firemen under the administration bill, H.R. 6449. and S. 15. Basically, your bill, the administration bill, defines a public safety officer as a person serving with or without compensation in any activity pertaining to firefighting. And then it goes on to say that that person will be covered only if a death results from a criminal act, or an apparent criminal act. So, I want to know if the administration bill would only cover the fireman who is in the act of fighting a fire and his death occurred during that firefighting activity as a result of a criminal act or an apparent criminal act?

Mr. McKevitt. I do not think it would be that narrowly construed because firemen are drawn into other matters besides fighting fires where they may be subject to a criminal act; demonstrations, for example.

Mr. Wiggins. Well, if it is your intent to cover firemen, I think it might be wise to be less explicit because firefighting is a precise and specific activity.

Mr. McKevitt. True.

Mr. Wiggins. "Firefighting" would not necessarily be limited to a fireman. I take it that a person attempting to put out a fire in his own home, if it happened that his wife set the house on fire, possibly would be——

Mr. McKevitt. And then she shot him?

Mr. Wiggins. Something such as that. Well, let us take that hypothetical situation and see if it would cover an individual putting out a fire in his own home, if his wife should shoot him in the process. A public safety officer means a person "serving a public agency." Well, now. that is questionable. "With or without compensation in any activity pertaining to firefighting." I presume that a volunteer is. in a sense, serving a public agency if he is putting out a fire. Well, my suggestion, Mike, to you, is that you give some consideration to your narrow definition of firefighting. If you intend to include firemen, who may be killed as the result of a criminal act, but not engaged in the activity of fighting a fire at that time, I would——

Mr. McKevitt. You might want to broaden the language by saying a fireman who is killed by a criminal act while performing in the line of duty.

Mr. Wiggins. Well, all right, I will consider such a suggestion.

Now, I want to compare H.R. 12, Chairman Rodino's bill, and comparing its effect with respect to firemen with the administration bill. effect with respect to firemen with the administration bill.

Now, directing your attention to H.R. 12, I read H.R. 12 as extending coverage to a fireman engaged in the protection of life or property from fire.

Mr. McKEVITT. Yes.

Mr. WIGGINS. Without reference to whether the fireman was killed as a result of any criminal act.

Mr. McKEVITT. Well, speaking——

Mr. EILBERG. We are in agreement and would stipulate that is the case and we would require, if we are supporting that version, that he die in the line of duty.

Mr. WIGGINS. In my experience, Mike, a fireman is engaged, in a great many activities that are not directly related to fighting a fire. There are a great many fire protection activities that firemen engage in on a routine basis throughout the day. They check plugs, they check buildings to see that they conform with basic safety requirements. Would you say that a fireman who is engaged in that kind of fire protection work is engaged in the protection of life or property from fire?

Mr. McKEVITT. Well, you are saying we are going to proceed on the administration definition of a criminal act, because he will——

Mr. WIGGINS. No, I want you to comment on Chairman Rodino's bill and I am really trying to get clear in my mind the extent of coverage for firemen. Let me just give you a hypothetical illustration. Let us suppose a fireman gets in a car and he drives down to check a fireplug.

Mr. McKEVITT. I know what you mean. I am aware of your question.

Mr. WIGGINS. All right. And on the way down to check that plug, he is killed in an automobile accident. Is the firemen, at the time he is killed, engaged in the protection of life or property from fire?

Mr. McKEVITT. Well, you asked me to comment on Chairman Rodino's bill, but which hat do I put on: the administration's hat or Mike McKevitt's hat, or what have you?

Mr. WIGGINS. I know you to be a skilled lawyer and I am interested in your views.

Mr. McKEVITT. I do not see that coming within the scope of this type of legislation. That is not looked upon as a normal, hazardous part of the occupation. False alarms can be extremely hazardous in firefighting itself and also demonstrations can be, but I think routine checking would be going beyond the scope of what the intent might be.

Mr. WIGGINS. Well, if a fireman is killed in a training exercise, falls off a ladder, falls out of tower, whatever, I think that the attorney for his survivors would look at this language very carefully in determining whether or not his client might be entitled to $50,000 because the decedent was, at that time, engaged in an activity which is directly related to the protection of life or property from fire. Don't you?

Mr. McKEVITT. Yes.

Mr. WIGGINS. I think this is a problem that we need to address ourselves to, and if we wish to cover firemen only if they are responding to a fire or an apparent fire, we ought to be more explicit in that regard.

Mr. McKEVITT. You could have two interpretations because it does say that a fireman engaged in the protection of life or property from fire, and I think that you have to go beyond the Rodino language, or take a second look at it, because your point is well taken. But, on the other hand, I do not think that it should be limited to fire because you have got to consider, as I say, these matters of false alarm and also demonstrations, because the biggest, from my experience as a district attorney, in my 4 years in dealing closely with the fire department, our biggest cause of subjection to criminal acts was demonstrations.

Mr. Eilberg. Will you yield at that point? Do I understand, Mike, that you might be willing to extend your personal point of view, but, let us say, not the Department at this point and that if a fireman dies as a result of hazardous duty, he should be covered by any benefit legislation? Would you say that that is your point of view?

Mr. McKevitt. Well, I sort of murky up the waters when I do that, Mr. Chairman, because I am here on behalf of the administration.

Mr. Eilberg. So you would rather not say?

Mr. McKevitt. No: I would just say which of my comments are of a personal nature rather than that of the administration.

Mr. Wiggins. All right. I will not report them directly. I might leak them, however.

Mr. Eilberg. Ms. Holtzman?

Mr. McKevitt. I have become quite a bureaucrat since you saw me last.

Ms. Holtzman. Mr. McKevitt, you said that one of the purposes of this legislation was to assist in the recruitment of police officers and fire officers. Do you have any statistics to show, whether in areas where, for example, there have been many policemen killed in the line of duty or firemen, that there have been any difficulties in recruiting police officers? Is that a national problem?

Mr. McKevitt. It is sort of nonstatistical because the question is how do you poll those chaps who said I will not join the police department because——

Ms. Holtzman. Do you have information from the police departments stating that they are having difficulty in recruitment?

Mr. McKevitt. I can speak of personal experience of one that did because of this concern for awhile because of the terms that were popular at that time, the attitudes and I suppose the risk involved, as well. It is a question of how you would break it down, whether it is because they did not like to be called "pigs," whether they did not like to have stuff thrown in their face, or whether they were worried about the inadequate benefits in case they were killed in the line of duty. I think certainly what has developed since approximately 1966 and thereon, has been a deterrent to recruitment and it was caused by many things, including, I think, the risk.

Ms. Holtzman. Well, I mean we are not able to isolate this problem out.

Mr. McKevitt. It is very difficult. Congressman Biaggi, himself, of course, has been a policeman, but as I say, having lived with these people for 4 years, it is a very sophisticated type of work, and once you get them into it, they become interested and it is extremely exciting work, but it is extremely difficult to get them into it oftentimes, highly qualified and high caliber of people into it.

Ms. Holtzman. Do you have any statistics about how many police departments provide some sort of death benefit, or how many States do?

Mr. McKevitt. Pardon me?

Ms. Holtzman. Do you have any information or does your Department have any information on how many States provide death benefits?

[A chart summarizing State workmen's compensation laws follows:]

COVERAGE OF LAWS, JAN. 1, 1972

Jurisdiction	Employments covered [1]		Exceptions [2]	Special coverage provisions [1]
	Private	Public		
Alabama	Elective as to all employments having 4 or more employees.[3]	Voluntary as to county, city, town, village, or school district: compulsory in certain counties.	Farm labor, domestic servants, and casual employees.	Voluntary as to employers of less than 8, except farmers.[4]
Alaska	Compulsory as to employers of 1 or more.[3] Employee includes elected or appointed corporate executive officer.	Compulsory as to State government and its political subdivisions, members of State boards and commissions. Includes volunteer firemen and policemen.	Part-time babysitters, cleaning persons, harvest help, etc.	Voluntary as to executive officers of a municipal, charitable, religious, educational or other nonprofit corporation.
Arizona	Compulsory as to all employers having 3 or more workmen or operatives regularly employed. Employee may reject.[3]	Compulsory as to the State and each county, city, town, municipal corporation, and school district. Includes volunteer fire departments, regular members of sheriff's volunteer reserves.	Farm labor "not employed in the use of machinery." Domestic servants and casual employees.	Voluntary as to employers of agricultural worker or domestic servants. Motion picture business employers and employees may be exempted from law provided equal benefits are provided by insurance in domicile State.
Arkansas	Compulsory as to all employers having 5 or more employees.[3]	Compulsory as to State of Arkansas and its agencies, departments, and institutions.	Farm labor, domestic servants, casual workers, public charities, vendors or distributors of newspapers and other publications.	Voluntary as to excluded employments. Compulsory for building repair work, if contractor employs 2 or more employees at any one time. Compulsory for contractor employing 1 or more where he subcontracts.
California	Compulsory as to all employments [3]	Compulsory as to all employments except clerks and deputies serving without remuneration.	Domestic servants (unless employed by 1 employer for over 52 hours a week), newspaper vendors, charity workers, casual employees, and volunteer member workers at camps, etc., operated by nonprofit organizations. Gardeners if not employed by any 1 individual for more than 44 hours a month. Employers solely sponsors of bowling teams.[5] Babysitters.	Voluntary as to excluded employments. Provides, with exceptions that all persons who assist a peace officer in active law enforcement at his request are deemed employees of the public entity they serve.[6]
Colorado	Elective as to all employments [3]	Compulsory as to all public employments. Covers volunteer firemen.	Domestic servants, and casual employees	Voluntary as to excluded employments. Certain farm labor covered.
Connecticut	Compulsory as to all employments	Compulsory as to all State and public corporations.	Casual employees, outworkers, worker in private dwelling not regularly employed over 26 hours per week and corporate officers electing not to be included.	Voluntary as to excluded employments.
Delaware	Compulsory as to employments having 3 or more employees.[3]	Elective as to State and certain counties, cities, and towns.	Farm labor, domestic servants, and casual employees.	Voluntary as to employers of less than 3 employees.

See footnotes at end of table.

COVERAGE OF LAWS, JAN. 1, 1972—Continued

Jurisdiction	Employments covered[1]		Exceptions[3]	Special coverage provisions[1]
	Private	Public		
District of Columbia	Compulsory to all employments	Compulsory for all employment, except officers or employees of the United States, State, or foreign government.	Domestic workers and farm labor are not included.	
Florida	Compulsory as to employments having 3 or more employees.[3]	Compulsory as to State, political subdivisions except as to officers elected at polls.	Domestic servants, casual employees, 20 or less farm labor, professional athletes, independent contractors, 9 or less turpentine labor, and employees of common carriers.	Voluntary as to excluded employments.
Georgia	Elective as to employments having 10 or more employees.[3]	Compulsory as to the State, municipal corporations and political subdivisions.	Farm labor, domestic servants, charitable employees, and employees of common carriers.	Voluntary as to excluded employments and county school districts, full-time county employees, officials—salaried or elected and planning commissions.
Guam	Compulsory for all industrial employments.[7]	Both paid and voluntary work done for government of Guam or any political subdivision thereof except U.S. Government employees covered by Public Law 208 and elected officials.	Employees engaged in interstate or foreign commerce covered only so far as the same is permissible under the laws of the United States; farm labor and casual employees.	All contracts of living in the territory are presumed to include an agreement to cover injuries received outside the territory by accident arising out of and in the course of employment.
Hawaii	Compulsory as to industrial employment, as defined.[7]	Compulsory as to all public officials elective or appointive. Covers public board members, reserve police officers and volunteer firemen.	Casual employees	Voluntary as to employments not defined as industrial.
Idaho	Compulsory as to all employments[3]	Compulsory as to all public employments except judges of election, clerks of election, and jurors.	Agricultural pursuits, domestic servants, casual employments, employees of charitable organizations, in dwelling members of employer's family, outworkers, employment not for money, airmen, working members of partnership.	Employees within State who work for employers domiciled in another state are covered. Credit is provided for benefits paid to employees under the law of other States.
Illinois	Compulsory as to enumerated "extra-hazardous" employments. (Including occupational diseases.)[3]	Compulsory as to all public employments except officials and members of fire and police departments in cities over 200,000 population. Members of general assembly and State guard.	Certain farm labor and persons not in usual course of employer's business.	Voluntary as to excluded employments.[8]
Indiana	Elective as to all employments[3]	Compulsory as to the State, all municipal corporations and all political subdivisions of the State, includes State legislators, elected and appointed officials.	Farm labor, domestic servants, casual workers, and railroad employees engaged in train service.	Compulsory as to coal mining. Voluntary as to excluded employments.
Iowa	Compulsory as to all but excepted employments,[3] including corporate executive officers who are employees.	Compulsory as to all public employments, except firemen and policemen entitled to pension fund. Covers highway safety patrol officers, conservation officers and volunteer firemen.	Voluntary as to farm labor	Employees within the State who work for employers domiciled in another State are covered. Credit is provided for benefits paid to employees under the law of other States.

Kansas	Presumed elected as to "especially dangerous employments" enumerated where 3 or more employees are employed at time of accident, includes executive officers of corporations.	Elective as to county, city, school district, drainage district, and other public and quasi-public corporations. State office boards and commissions in hazardous work, not including clerical work.	Farm labor. Any employer, including agriculture, may elect regardless of hazardous or nonhazardous, except State agencies for clerical employees.	All mines, quarries, building, electrical and engineering work covered regardless of number of employees. Voluntary as to excluded and nonhazardous employments.
Kentucky	Elective as to the employments having 3 or more regularly employed in the same occupation.	Compulsory as to all departments, administrative bodies and agencies of the state. Includes members of National Guard on active State duty.	Domestic servants, farm labor, steam railroads and common carriers. See code for definitions of hazardous employment.	Operators of threshing machines are specifically covered. Voluntary as to excluded employment.
Louisiana	Elective as to hazardous employments enumerated or decided by court to be hazardous. Includes executive officers of private corporations, other than charitable.	Compulsory as to all public employments except officials.	Crews of crop spraying aircraft while acting as contractors of employees of persons principally engaged in agriculture.	Voluntary as to nonhazardous employments. Insurer estopped from denying liability on grounds employments covered are nonhazardous.
Maine	Elective as to all employments of 4 or more, including corporate executive officers.	Compulsory as to the State, counties, cities, and quasi-municipal corporations.	Casual or seasonal farm labor, domestic servants, maritime employees in interstate or foreign commerce and wood operations.	Voluntary as to excepted employments and those with 3 or less regular employees.
Maryland	Compulsory as to all employments.[3] Includes officers of corporations. Covers farm and daily farmers of 3 or more employees.	Compulsory as to State, county, city or any agency thereof; volunteer firemen or rescue squads, paid firemen in Prince George's County and prisoners working for county roads boards. Elective for volunteer fire companies in Harford County, Carroll County and Anne Arundel County.	Domestic servants and certain maintenance workers, not employed for 30 consecutive days, around a private home; casual, seasonal or migratory farm labor who do not operate machinery.	Voluntary as to excluded employments. Partners and sole owners may elect coverage and furnish notice to carrier and commission. All forest wardens, crewmen, and fire fighters of the Department of Forests and Parks.
Massachusetts	Compulsory as to employments having 4 or more employees, farm labor or all employees in hazardous employments so determined by commissioner.[3]	Compulsory as to State; elective as to counties, cities and districts having power of taxation. Municipalities required to indemnify police and firemen. Cities and towns may cover certain elected or appointed officials.	Persons not in usual course of employer's business; masters and seamen; employees or carriers subject to Interstate Commerce Act, but telephone workers are not excepted; family in household of employer, and persons in religious, charitable and educational institutions other than laborers, workmen, mechanics and nurses.	Elective as to employers of 3 or less in nonhazardous employments. Voluntary as to domestic servants hired casually or on a seasonal basis.
Michigan	Compulsory as to all employers having 3 or more employees, or less than 3 if 1 is employed for 35 hours per week for 13 consecutive weeks by same employer.[3,9]	Compulsory as to all public employments.[10]	Farm labor,[11] domestic servants, and employers subject to Federal Employer's Liability Law.	Voluntary as to employer of 2 or less, farm labor, and domestic service. Purchase of workmen's compensation policy.
Minnesota	Compulsory to all employers. Includes executive officers in some instances.[3]	Compulsory as to all public employments. Includes voluntary uncompensated workers, except inmates in state institutions of public welfare or correction; includes voluntary uncompensated civil defense workers on active duty during peace time, but excluding elected or appointed officials of the state or its subdivisions.	Farm labor, domestic servants, steam railroads and casual employees. Professional athletes if equal compensation is provided by contract.	Commercial threshing and bailing specifically included. Voluntary as to farm labor and domestic service or members of veteran's organizations.

See footnotes at end of table.

COVERAGE OF LAWS, JAN. 1, 1972—Continued

Jurisdiction	Employments covered[1]		Exceptions[2]	Special coverage provisions[1]
	Private	Public		
Mississippi	Compulsory as to all employers having 8 or more workmen or operatives regularly employed.[12]	Voluntary as to public employments[13]	Domestic servants, farmers, farm labor, newspaper distributors and other independent contractors.	Voluntary as to exempted employers Executive officers of private or nonprofit corporations may be covered under act.
Missouri	Elective as to all employments having more than 7 employees. (Elective for occupational diseases.)[3] Employers of 7 or less may elect to operate under the act, but an employee may reject.	Voluntary as to all public employments, also to State militia. Compulsory for all State employees, elected or appointed State officials and members of the legislature, and for contractors of a public corporation.	Farm labor and domestic servants	Voluntary as to excluded employees. Workers on State welfare projects under Federal Economic Opportunity Act shall be insured.
Montana	Compulsory as to employers engaged in hazardous occupations.[3]	Compulsory as to all public employments including public contractors.	Farm labor, domestic servants, agricultural employments and railroad employments.	Voluntary as to nonhazardous employments and farm labor.
Nebraska	Compulsory as to all employments.[3] Includes executive officers.	Compulsory as to all employments including officials elected or appointed for fixed terms and civil defense agency.	Farm labor, domestic servants and casual employees.	Voluntary as to farm labor and domestic service.
Nevada	Compulsory as to all employers of 2 or more employees.[3]	Compulsory as to all employments including public contractors. Also includes unpaid members of State departments, boards, commissions, agencies or bureaus appointed by a statutory authority, members of local bands and orchestras.[14]	Farm labor, domestic servants, casual employees and stockholders of certain farming corporations who are compensated for services. Actors, except employees of motion picture producers.	Elective as to farm labor and domestic service.
New Hampshire	Compulsory as to all employments. Elected or appointed corporate executive officers in excess of 3 counted as employees.[3]	Compulsory as to all public employments. Civil defense workers treated as State employees.	Elective as to farm labor of 3 or more, domestic servants, and casual employments; or owner or occupant of dwelling of not more than 3 apartments who hires repair or maintenance men thereon, or partners.	
New Jersey	Elective as to all employments[3]	Compulsory as to all public employments	Casual workers, maritime workers, and railroad workers engaged in interstate commerce.	Employers of farm labor and domestic servants are not required to carry insurance but are liable for compensation under act.
New Mexico	Elective as to extrahazardous employment having 4 or more employees.[3]	Elective as to the State and each county, city, town, school district, drainage, irrigation or conservancy district, and public institution and administrative board employing workmen in any extrahazardous occupation.	Farm or ranch labor, domestic servants, and casual employees.	Numerical exception does not apply to structural work 10 feet above ground. Voluntary as to nonhazardous employments, farm labor, domestic service and where less than 4 are employed.

New York	Compulsory as to enumerated employments and employments having 1 or more employees. Includes newsboys under 18 and provides penalties.[3] [15]	Compulsory as to any employment by the State and any employment by a subdivision of the State when engaged in hazardous occupations enumerated. Voluntary as to municipal corporations in nonhazardous employments. Also volunteer firemen and volunteer social workers.	Elective as to farm labor if payroll during prior year was less than $1,200, private or domestic chauffeurs in cities under 2,000,000, volunteer workers, and domestic workers not employed by same employer at least 48 hours per week.	Executive officers of corporation other than religious, charitable, veteran or educational are covered. Public school teachers covered in districts not in cities of more than 1,000,000 population. Covers school aides.
North Carolina	Elective as to employments in which 5 or more employees are regularly employed.[3] [16]	Compulsory as to public employments and public and quasi-public corporations except elective officials and certain firemen. Elective officials may be covered by resolution of governing body; municipal auxiliary police and Union County deputy sheriffs.	Farm labor, domestic servants, sawmills and logging operators having less than 10 employees, and railroad employees and if operate less than 60 days in consecutive 6 month period. Railroad employees.	Voluntary as to casual employees, farm labor, domestic servants, and employers having less than 5 employees, but 1 or more employees engaged in ionizing radiation work.
North Dakota	Compulsory as to all hazardous employments.[3]	Compulsory as to all public employments	Farm labor, domestic servants, casual workers, illegal enterprises of occupations, executives unless performing duties performed by employee.	Voluntary as to nonhazardous and excluded employments.
Ohio	Compulsory as to all employments regularly having 3 or more employees.[3]	Compulsory as to State, county, city, township, incorporated village and school district.[17]	Casual emplloyees	Voluntary as to employments having less than 3 employees.
Oklahoma	Compulsory as to hazardous employments having 2 or more workmen.	Compulsory as to the State, county, city, or municipality when employing workmen in hazardous employments except where equivalent schemes are in force.	Agriculture, horticulture, dairy and stock raising, and railroads engaged in interstate commerce.	If insured, presumed to be hazardous.
Oregon	Compulsory as to all employers of 1 or more.	Compulsory as to State, departments, city or town (except those having over 200,000 population) and other political subdivisions.	Domestics, casual, interstate transportation, sole proprietors, corporate officers and certain charitable or relief work.	Voluntary as to excepted employments covers volunteer trainees in State Schools for deaf and blind and clients in the vocational rehabilitation division. Partners operating equipment for hire may elect coverage.
Pennsylvania	Elective as to all employments	Compulsory as to all public employments. Includes volunteer firemen and members of ambulance corps.	Farm labor, domestic servants, industrial homework and casual employees.	Voluntary as to farm labor and domestic service.
Puerto Rico	Compulsory as to all employments [3]	Compulsory as to all public employments with or without salary.	Casual and domestic workers	Sole proprietors and their families when supervising or engaging in manual labor in their business or farm.
Rhode Island	Compulsory as to all employments having 4 or more employees,[3] and employers in hazardous occupations.	Compulsory as to the State; elective as to cities or towns.	Agriculture, domestic service	Voluntary as to agriculture, domestic service and employers of less than 4 employees, except those in hazardous occupations.

See footnotes at end of table.

COVERAGE OF LAWS, JAN. 1, 1972—Continued

Jurisdiction	Employments covered [1]		Exceptions [2]	Special coverage provisions [1]
	Private	Public		
South Carolina	Elective as to all employments having 15 or more regular employees.[3]	Compulsory as to all public employments except elective and appointive officials. Covers State and National Guard.	Casual employees, persons engaged in selling agricultural products, farm labor, sawmills, manufacturers of shipping containers, logging operations, production of turpentine, steam laundries, rock quarries, sand mines, oil mills, domestic servants, railroads, express companies, State and county fair associations and peach packers.	Voluntary as to excluded employments.
South Dakota	Compulsory as to all employments.[3]	Compulsory as to all public employments and volunteer workmen thereof except elected or appointed officials. Firemen covered. Subdivisions of State may elect to cover elected and appointed officials.[8]	Farm labor, domestic sarvants and casual employees.	Compulsory as to threshing machines and other farm machinery operated for profit. Voluntary as to farm labor and domestic service.
Tennessee	Elective as to all employments having 5 or more employees.[3]	Voluntary as to State and political subdivision.	Farm labor, domestic servants, casual employees and employees of interstate common carriers.	Voluntary as to employers of less than 5.
Texas	Elective as to all employments having 3 or more employees. Compulsory as to motor bus companies.[19]	Compulsory as to employees of State highway department. Counties and cities may provide compensation for employees (by separate acts.)[20]	Farm and ranch labor, domestic servants, railways used as common carriers, and employees not in usual course of employer's business.	Cities, towns and villages may provide compensation for their employees. Elective as to excluded employees.
Utah	Compulsory as to all employments having 1 or more employees.[3]	Compulsory as to all public employments	Farm labor, domestic servants and casual employees.	Voluntary as to farm labor, and domestic service. Partners and sole proprietors devoting full time to their business may elect coverage.
Vermont	Elective as to all employments for gain having 3 or more employees.[3] [18]	Compulsory as to State department of highways. Elective as to towns, school districts, fire districts, and villages, except elective officials.[21] National Guard as State employees.	Casual employees. State treasurer, State auditor and commissioner may award compensation in certain cases of State employees. Amateur sports excluded.	Voluntary as to employers with 2 or less employees.
Virginia	Compulsory as to all employments having 5 or more employees; includes executive officers.[3]	Compulsory as to all public employments except administrative officers and employees elected or appointed for definite terms. Includes judges and clerks of juvenile and domestic relations courts.	Casual employees, horticultural and farm laborers, domestic servants, employees of steam railroads and employments not in usual course of employers trade, business or occupation.	Forest wardens, Civil Defense Corps and National Guard covered by statute. Voluntary as to employers of less than 7, farm labor and domestics.
Washington	Compulsory as to all employments [3]	Compulsory as to the State, county, and municipality or other taxing district when engaged in extra hazardous work, unless other provision is made for injured employees.	Domestics, casual, railroad, or unpaid workers in eleemosynary institutions.	
West Virginia	Elective as to all employments [3]	Compulsory as to the State and all governmental agencies or departments, except elective or appointive officials.	Farm labor and domestic servants	Voluntary coverage for casual employees for not more than 3.

Wisconsin	Compulsory as to all employments (except farm labor if paid wages of $500 or more in any calendar quarter for services in the State. Compulsory as to farmers with 6 or more employees.	Compulsory as to all employees and members of volunteer fire departments or legally organized rescue squads.	Domestic servants and employees not usual course of employer's business.	Voluntary as to excluded employments May cover volunteer workers.
Wyoming	Compulsory as to enumerated "extra-hazardous" occupations conducted for gain.[3]	Compulsory as to State, county and municipal corporations when engaged in "extra-hazardous" work except sheriffs, constables or their deputies, volunteer firemen and enumerated law enforcement officers.	Domestic servants	Elective as to ranch, farm, agricultural, horticultural and stock raising employments employing 1 or more.
Federal Employees' Compensation Act.	All civil employees, including employees or wholly owned instrumentalities and persons performing activities of civilian employees but not paid therefor.			
Longshoremen and Harbor Worker's Act.	All employees in maritime employment on the navigable waters of the United States including drydocks.	Officers and employees of the United States or any State or foreign governments are not covered.	Master or crew of any vessel and persons unloading or reparing vessels of less than 18 tons.	(22).
Alberta	Compulsory as to all employments listed in schedule I.	Compulsory as to provincial employees as listed in schedule II.	Farm labor, domestic servants, outworkers,[23] and casual employers.	Voluntary as to farmers and industries not under schedules I or II.
British Columbia	Compulsory as to all employments listed in pt. I.	Compulsory as to all provincial and municipal employees, also volunteer ambulance drivers and attendants.	Outworkers, 3 certain members of employer's family, employees of American contractors engaged in U.S. Government projects.	Voluntary as to all unenumerated employments and to self-employed individuals. Board may also cover unpaid volunteer workers for public welfare and persons undergoing vocational rehabilitation.
Manitoba	Compulsory as to all employments listed in pt. I.	Compulsory as to all provincial and municipal employments.	Farm labor, domestic servants, outworkers, officers of corporations, resident members of employer's family.	Voluntary as to farm labor, corporate officers, resident members of employer's family, domestic servants and unenumeratad employments.
New Brunswick	Compulsory as to all employments listed in pt. 1.	Elective as to public employments which includes volunteer municipal fire brigades.	Farm labor, outworkers, 3 domestic servants and casual employees.	Voluntary as to farm labor and domestic. servants and unenumerated employments.
Newfoundland	Compulsory as to employments listed in pt. 1.[24]	Elective as to public employments, except firemen and policemen who are excluded.	Casual employees, outworkers,[23] and executive officers and directors of corporations.	Voluntary as to unenumerated employments.
Nova Scotia	Compulsory as to all employments listed in pt. 1.	do	Farm labor, domestic, outworkers,[23] and casual employees.	Voluntary as to farm and domestic labor.
Ontario	Compulsory as to all employments listed in schedules I and II.	Compulsory to all provincial and municipal employments also volunteer firemen.	Domestic servants, outworkers,[23] executive officer of corporation.	Voluntary as to unenumerated employments.
Prince Edward Island	Compulsory as to employments listed, pt. I.	Compulsory except for city, town, or municipal police and firemen. Police and firemen may be covered by application.	Casual employees, outworkers,[23] police, firemen, farm laborers, domestic servants, members of family under seventeen.	Do.
Quebec	Compulsory as to all employments listed in schedules I and II.	Compulsory as to all provincial and municipal employments in industries covered in schedules I and II.	Farm labor, domestic servants, outworkers,[23] and casual employees.	Do.

See footnotes at end of table.

COVERAGE OF LAWS, JAN. 1, 1972—Continued

Jurisdiction	Employments covered [1]		Exceptions [2]	Special coverage provisions [1]
	Private	Public		
Saskatchewan	Compulsory as to all employments listed in pt. I.	Compulsory as to all provincial and municipal employments, includes volunteer firemen.	Farm labor, domestic servants, outworkers,[23] and casual employees.	Voluntary as to farm and domestic labor and unenumerated employments.
Canadian Government Employees Act.	Employees of government departments, etc., in Canada and abroad.	Crown corporations, boards, commissions,	----------	Claims are determined by provincial boards. Benefits same as private employees in same province.
Canadian Merchant Seamen's Act.	Employees of Canadian registered ships as defined.	----------	Pilots, apprenticed pilots and fishermen	No compensation payable if entitled under Government Employees Compensation Act.

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[1] Compensation laws are classified as compulsary or elective. A compulsary law requires every employer to accept the act and pay the compensation specified. An elective act is one in which the employer has the option of either accepting or rejecting the act, but in case he rejects it he loses the customary common law defenses (assumed risk of the employee, negligence of fellow servants and contributory negligence). In most States workers in excepted or excluded employments may be brought under coverage of the act through voluntary action of the employer. In other States, such action of the employer must be concurred in by the employees.

[2] Applying to private employments only. The exceptions for public employments are given under "Employments Covered—Public."

[3] See "Exceptions."

[4] Special act covers employees of U.S.S. Alabama Battleship Commn. and authorizes excess medical care benefits not to exceed $10,000 per employee; also, for employees of Dept. of Agriculture and industries.

[5] Excludes amateur athletic participants who are not employees.

[6] Voluntary for sponsoring agencies of Economic Opportunity Programs.

[7] Employment in trade, occupation, or profession, carried on by employer for pecuniary gain.

[8] The law states that it is elective as to private employments of a nonhazardous nature. However as there are no provisions in the law abrogating the employer's defenses in case he does not accept the act, it is considered, in this table, to be a voluntary one. State Supreme Court rules all public employees subject to the act without right of rejection.

[9] Husbands and wives regularly employed by their spouses on full time basis, at specified rate of pay and specified hours of employment are eligible for compensation benefits unless excluded by employers' workmen's compensation insurance by endorsement.

[10] Volunteer firemen deemed to be receiving wages that would secure maximum benefit.

[11] Agricultural employers of 1 or more for 35 hours per week for 5 consecutive weeks must furnish medical and hospital coverage as of july 1, 1967.

[12] Non-profit charitable, fraternal, cultural or religious corporations or associations excluded.

[13] Specifically excluded from coverage are handicapped in sheltered workshop programs under department of public welfare.

[14] Members of non-profit organizations and clubs while rendering ambulance service deemed employees earning $300.00 a month.

[15] Provides double amount of compensation if employed knowingly in violation of education law.

[16] Executives and officers of corporations included if workmen's compensation insurance purchased. Compulsory for all employees for radiation.

[17] Except firemen and policemen in cities with pension funds. If pension is less, difference will be paid.

[18] Volunteer firemen and volunteer workmen of political subdivisions deemed to be receiving wages entitling them to maximum benefits.

[19] Executive officers of corporations may be covered by insurance policy but not countered as employees to make employer subject to act.

[20] State of Texas now provides for self insurance coverage for the University of Texas, Texas A and M College Systems and the State Highway Department.

[21] Extends to road commissioner and selectmen engaged in highway construction.

[22] By separate enactment. Act is made applicable to employees at Military, Air and Naval bases and public works outside the United States; employees of welfare and morale services for Armed Forces outside the United States; and employees of non-appropriated funds (ship's service, PX's etc.) within and outside the United States.

[23] Outworker is one to whom articles are given for cleaning, repair, etc. in his home.

[24] Deep-sea fisherman in boats of 70 tons or more, as of july 1, 1967. Voluntary as to smaller boats.

Note: State Courts vary in decisions whether minimum number of persons must be in State.

Mr. McKEVITT. I do not have it at my fingertips but I will be glad to get it for you. I would hope that you are taking notes back there, Dean. I will be glad to get that for you.

Ms. HOLTZMAN. Just in line with this, how many of the police officers who were killed had adequate life insurance during the last few years? That might be another interesting piece of information.

Mr. McKEVITT. I think it would and I think not only figures from the Department but other interested bodies representing police organizations might have some figures on this as well.

Ms. HOLTZMAN. Yes.

Mr. EILBERG. If you can.

Mr. McKEVITT. Yes, if we can. And I certainly share your thirst for more facts, because I experienced the same thing in the last session. It was a point well raised and we will be more than glad to do our best effort to get what we can for you.

[Subsequent to the termination of these hearings the following information was received:]

DEPARTMENT OF JUSTICE.
Washington, D.C., September 18, 1973.

HON. JOSHUA EILBERG,
Chairman, Subcommittee No. 1, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR JOSH: I greatly appreciated the opportunity to testify before your subcommittee on July 26, 1973, and to present the views of the Department of Justice on two bills before the subcommittee—H.R. 12 and H.R. 163.

In response to several requests for additional information raised by yourself and your colleagues on the subcommittee, I am providing the following information for the record:

Question 1. Please furnish the subcommittee with the figures of the number of public safety officers killed in the line of duty regardless of whether a criminal act was involved.

Answer: *Line of Duty Death Benefits.*—Casualty rates relevant to line of duty death benefits legislation (other than group life insurance) concern themselves with sub-classifications of line of duty deaths.

1. Deaths as a result of felonious crimes or incident to a felonious crime.
2. Deaths as a result of and/or incident to felonious crimes and deaths resulting from hazardous duties (accidents, etc.).

By strictest interpretation on line of duty deaths associated with felonious crimes, calendar year 1973 fatalities and benefits are estimated as:

	Number	Amount
Police	126	$6,300,000
Firefighters	3	150,000
Corrections	2	100,000
Marshals	1	50,000
Total	132	6,600,000

If a broader distinction is made of line of duty deaths to include deaths from hazardous duty, in addition to felonious causes, our estimates for calendar year 1973 are:

	Number	Amount
Police	172	$8,600,000
Firefighters	230	11,500,000
Corrections	4	200,000
Marshals	2	100,000
Total	408	20,400,000

Neither of the above estimates includes deaths as a result of felonious actions or hazardous deaths of volunteer public safety officers.

Question 2. What are the Department's views on a state insurance program using paid-in contributions to match federal assistance, as opposed to a straight gratuity?

Answer. Because of the various state programs now in existence, and the formulation of other programs on the local level, the Department would be most hesitant to support a state insurance program using paid-in state contributions to match federal assistance. A program of this type, administered at the federal level would constitute an intrusion into the policies and programs which are best administered by state and local officials. The straight gratuity method is desirable from the standpoint that it does fill a need created by the death of a public safety officer involving the commission of a crime, but would not interfere with collateral benefits available at the state and local level.

Question 3. What is the position of the Department on matching grants to the states for death benefits programs?

Answer. The Department would not support the use of matching grants to the states for death benefits programs. This approach would encourage state and local authorities to transfer the burden of compensation for these employees to the federal government. The primary responsibility for providing normal employee benefits should rest with the employers—the state or local governments. Financial assistance in this area should come from the states and local governments themselves rather than direct take-over of the function by the federal government. Matching grants would only serve to act as a disincentive to the states and local governments and result in a reliance on the federal government for compensation assistance.

Question 4. How many states have death benefits programs for public safety officers?

Answer. (See Attachment.) [See p. 171.]

Cordially,

Mike McKevitt,
Assistant Attorney General.

Ms. Holtzman. I am also curious about the veterans insurance program. I do not know if we have gotten any figures about what kind of life insurance the Government provides, or if it does, and the amount, if any, and if the serviceman has to contribute to maintain that.

Mr. McKevitt. Yes. I gave some figures earlier when you were on the floor. For the military killed in active service, they receive a death gratuity based on their pay ranging from $800 to $3,000. They have a voluntary life insurance program ranging from $5,000 to $15,000, depending on how much they pay in. And they receive money benefits from the Veterans Administration; not they, the servicemen, but their next-of-kin, ranging from $184 to $469 a month, depending on their rank. The wife and children receive PX and commissary privileges and medical facility privileges.

Ms. Holtzman. On the voluntary insurance, is that something that is paid for, in part, by the Government?

Mr. McKevitt. I think it is paid for in total by the——

Ms. Holtzman. By the serviceman?

Mr. McKevitt. I'm not sure, but oftentimes as you know, they continue it on after they depart from the Service.

Ms. Holtzman. Yes. Would there be other ways of accomplishing the same result by giving some incentives to the States to create death benefit programs in this regard? I know the insurance way was suggested as a possibility. I would certainly appreciate any other thoughts that you might have with respect to how this result could be accomplished, namely, to insure that policemen and others, firemen who engage in hazardous duty, would have adequate benefits for their survivors?

Mr. McKevitt. Well, rather than shoot from the hip on that, I think that is a very good question, and why don't I also include that in our review a determination of what States or local governments have pursued that avenue?

Ms. Holtzman. Right. And, of course, the other problem which would arise from this bill is that $50,000 might be really a very substantial sum, say, in possibly a rural area. It might not be the same kind of a sum in a city such as New York, where there are very high prices. And I do not know about that and I do not know whether that has gone into your thinking, at all. But, while we are talking about equal benefits, the value of that benefit certainly would be different in different areas of the country for survivors.

Mr. McKevitt. True. Except the way things are going, it is like moving pistons in an engine to keep on top of who is ahead of the other. I think Denver is not only high in prices but low on gas, and, as a result, you do have various, obviously certain areas, which do have lesser costs. You might be interested, by the way, to know that when I was a Member of Congress, I polled all of my policemen in the Denver area and I sent them questionnaires and the fire department as well, on, whether you should have a different benefit for those with survivors or those without and there was a very uniform feeling that it should be regardless of who the next-of-kin are, whether it is the parent, wife, wife and children.

Ms. Holtzman. OK. I have no further questions, Mr. Chairman.

Mr. Eilberg. Mike, did the Department consider the inclusion of the permanently disabled?

Mr. McKevitt. Yes.

Mr. Eilberg. And what was that?

Mr. McKevitt. It is their position that it be for death only.

Mr. Eilberg. I want to get back into something that we were discussing before about your personal position on fire fighters and dying as a result of hazardous duty and so forth. I would just like to call to your attention, and I do not have the Congressional Record before me, but I know you voted for the House bill and the committee report. The committee report says: "Similarly, since firefighting is an inherently dangerous activity, H.R. 16932 would cover firemen when they are actually and directly engaged in the protection of life or property from fire." So, this was apparently the congressional intent or, at least, the House intent as it passed the House. And I suggest that you might have supported that since you——

Mr. McKevitt. Oh, I did.

Mr. Wiggins. You were ambiguous then, too.

Mr. McKevitt. Well, as I say, and I mentioned earlier, there is my personal opinion and the position of the administration and I think Mr. Biaggi's staff member pointed out that I was a cosponsor of his bill last year, too.

Mr. Eilberg. Mike, would you continue with the balance of your statement now, as to the bill of rights?

Mr. McKevitt. All right. I think I better go out and open a law practice, Mr. Chairman.

Mr. Eilberg. I think you are doing very well.

Mr. McKevitt. I would now like to direct my attention to H.R. 163, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several States.

The bill would make planning and action grants from the Law Enforcement Assistance Administration contingent upon the complaints of law enforcement officers and the adoption of a so-called bill of rights for such officers in each State and local unit of government. The grievance procedure and bill of rights would have to be in effect within 1 year of enactment. The bill of rights would have to deal with such projects as political activity by policemen, their rights while under investigation, their representation on any police review boards, their rights to bring civil suits, the disclosure of finances, notice with respect to disciplinary action, and the establishment of a grievance commission.

I would like to interject here as a footnote that I served as Assistant Attorney General during the time in Denver of the infamous Denver police scandal, and this did involve political activity, among other problems, and how we would make the police department better, and how we would improve procedures, in addition to which, I took over the reins of the district attorney's office, which had been previously heavily endowed with political activity. And I have seen the abuses there. I think Congressman Biaggi said that was not one of the strong planks of his position on this bill, but from a personal standpoint I have seen great abuse of political activity in a police department and the district attorney's office, and also in a State attorney general's office.

Mr. Eilberg. Do you mean if they had the freedom to engage in political activities?

Mr. McKevitt. Yes.

The Department believes that many of the features of H.R. 163, including the rights contemplated in the bill, should be adopted by law enforcement agencies at the State and local level. However, we are of the opinion that it is not a proper role for the Federal Government to impose such rights as a condition for the receipt of LEAA funds. In essence, the legislation would do no more than establish certain work conditions for employment benefits for law enforcement officers. In our view, the decision to accept or reject these conditions or benefits should be based upon the unique factors of each individual agency in which the same way as salary, insurance benefits and other features of employment are determined. To do otherwise would be to encroach upon the traditional prerogatives of the States and local units of government.

This philosophy of course is embodied in the Safe Streets Act of 1968. Section 518 of the act states that "Nothing contained in this chapter or any other act shall be construed to authorize any department, agency, officer, or employees of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement agency of any State or any political subdivision thereof." H.R. 163 would appear to abandon this philosophy in favor of direct Federal intervention and control. We believe that this would establish a very unfavorable precedent, especially in light of our recent proposal to return more control over LEAA funds to the States.

We would like to point out, however, that a great deal of time and effort has been devoted by the National Advisory Commission on Criminal Justice Standards and Goals to the specific subject of police officers' rights. In fact, the final report of the commission, to be published soon, addresses many of the issues raised by H.R. 163 and promulgates certain standards for the consideration of all law enforcement agencies. We are hopeful of course that many of the recommendations will be voluntarily adopted. I would like to mention that a copy of the standards has been submitted to the subcommittee and I would commend it to your attention.

In summary then, while the department would like to see many of the provisions of H.R. 163 adopted on a voluntary basis, we are unable to support the bill as being an unwarranted intervention by the Federal Government into the strictly local affairs of these agencies.

In the report that was submitted this week on the position of the administration and the Department of Justice on this matter, we attached to a copy of the standards, standard 18.1 and following, as proposed for the LEAA, which I would be glad to touch on before the subcommittee at the present time.

Mr. Eilberg. Are those the standards referred to or——

Mr. McKevitt. Yes.

Mr. Eilberg. The Standards of the National Advisory Commission on Criminal Justice?

Mr. McKevitt. Right. And I know I share the frustration of Congressman Biaggi about studies, but this is one study that seems to have come to fruition. What it does do is set up guidelines for State and local governments; not mandatory, but recommended guidelines. And then you ask what action is being taken to implement them. Right now, LEAA has asked Mr. Dick Harris, who is chairman of the LEAA program in Virginia, to develop ideas to see that they are implemented. I can touch on each of the standards if you want.

Mr. Eilberg. I do not want to take the time to do that. You say that the implementation is entirely voluntary as far as the States and local municipalities are concerned?

Mr. McKevitt. The idea behind it is to say, look, these are uniform guidelines which we think are good procedure for implementation on the State and local level and we would encourage you to review these and consider these so far as your own State and local police, or fire, or public correctional agencies are concerned.

Mr. Eilberg. How great is the encouragement that you would make them——

Mr. McKevitt. Mandatory, no.

Mr. Eilberg. Would there be any other form of encouragement to try to get them to comply with the standards?

Mr. McKevitt. Right now it is more the idea of saying these are guidelines for your benefit, to give you a nudge.

Mr. Eilberg. I would like that for the record and may I also ask that your staff send a copy to Congressman Biaggi so that he can review that at his leisure.

[The document referred to follows:]

EXCERPTS FROM THE "REPORT ON POLICE," PREPARED BY THE NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

STANDARD 18.1.—THE POLICE EXECUTIVE AND EMPLOYEE RELATIONS

Every police chief executive should immediately acknowledge his responsibility to maintain effective employee relations and should develop policies and procedures to fulfill this responsibility.

1. Every police chief executive should actively participate in seeking reasonable personnel benefits in all police employees.
2. Every police chief executive should provide an internal two-way communication network to facilitate the effective exchange of information within the agency and to provide himself with an information feedback device.
3. Every police chief executive should develop methods to obtain advisory information from police employees—who have daily contact with operational problems—to assist him in reaching decisions on personnel and operational matters.
4. Every police chief executive should provide a grievance procedure for all police employees.
5. Every police chief executive should have employee relations specialists available to provide assistance in:
   a. Developing employee relations programs and procedures;
   b. Providing general or specific training in management-employee relations; and
   c. Collective negotiations.
6. Recognizing that police employees have a right, subject to certain limitations, to engage in political and other activities protected by the first amendment, every police agency should promulgate written policy that acknowledges this right and specifies proper and improper employee conduct in these activities.
7. Every police chief executive should acknowledge the right of police employees to join or not join employee organizations that represent their employment interests, and should give appropriate recognition to these employee organizations.

STANDARD 18.2.—POLICE EMPLOYEE ORGANIZATIONS

Every police employee organization should immediately formalize written policies, rules, and procedures that will protect the rights of all members and insure that they can remain responsible to their oath of office.

1. Every police employee organization should place in writing the scope of its activities to inform all members of their organization's programs and their representatives' activities.
2. Every police employee organization should adhere to rules and procedures designed to insure internal democracy and fiscal integrity. These rules and procedures should include:
   a. Provisions to protect members in their relations with the police employee organization;
   b. Standards and safeguards for periodic elections;
   c. Identification of the responsibilities of the police employee organization officers;
   d. Provisions for maintenance of accounting and fiscal controls, including regular financial reports;
   e. Provisions for disclosure of financial reports and other appropriate documents to members, regulating agencies, and the public; and
   f. Acknowledgment of responsibility to the governmental entity legally charged with regulation of such employee organizations.

STANDARD 18.3.—COLLECTIVE NEGOTIATION PROCESS

Every police agency and all police employees should be allowed, by 1975, to engage in collective negotiations in arriving at terms and conditions of employment that will maintain police service effectiveness and insure equitable representation for both parties.

1. Legislation enacted by States to provide for collective negotiations between police agencies and public employees should give equal protection for both parties and should include:
   a. Provisions for local jurisdictions to enact specific rules for the collective negotiation process;

b. Procedures to prevent either party from circumventing the collective negotiation process;

c. Provisions for police agency retention of certain unrestricted management rights to insure proper direction and control in delivering police services;

d. Provisions to prohibit police employees from participating in any concerted work stoppage or job action; and,

e. Procedures that require adherence to the collective negotiation legislation by all parties.

2. Every police chief executive should insure that he or his personally designated representative is present during all collective negotiations involving the police agency, and that he is allowed to protect the interests of the community, the police agency, and all police employees.

3. Every police agency should insure that all police employees receive training necessary to maintain effective management-employee relations. This training should include:

a. Sufficient information to provide all employees with a general knowledge of the management-employee relations process;

b. Specific instructions to persons who represent the police agency in the collective negotiation process; and

c. Specific instructions to enable every supervisory police employee to perform his duties under any collective negotiation agreement.

4. Every police chief executive should encourage employee organizations to provide training to enable their representatives to represent members in the negotiation process adequately.

5. Every police chief executive should establish administrative procedures to facilitate the police agency's operation under any collective negotiation agreement.

6. Every police chief executive should recognize that in the collective negotiation process the problems of unit determination, areawide negotiation, and impasse procedures are largely unresolved and that little guidance is currently available in these essential areas.

STANDARD 18.4.—WORK STOPPAGES AND JOB ACTIONS

Every police chief executive should immediately prepare his agency to react effectively to neutralize any concerted work stoppage or job action by police employees. Any such concerted police employee action should be prohibited by law.

1. Every State, by 1976, should enact legislation that specifically prohibits police employees from participating in any concerted work stoppage or job action. Local legislation should be enacted immediately if State prohibitive legislation does not currently exist.

2. Every police agency should establish formal written policy prohibiting police employees from engaging in any concerted work stoppage or job action.

3. Ever police agency should develop a plan to maintain emergency police service in the event of a concerted employee work stoppage.

4. Every police chief executive should consider the initiation of internal disciplinary action, including dismissal, against police employees who participate in a concerted job action or work stoppage. Among the many disciplinary alternatives available to the chief executive are actions against:

a. All participating employees for violating prohibitive legislation and policy;

b. Individual employees when their individual conduct warrants special action;

c. Only those employees who encouraged, instigated, or led the activity; and

d. None of the participating employees; however, criminal or civil action may be sought for violations of legislative prohibitions.

STANDARD 19.1.—FOUNDATION FOR INTERNAL DISCIPLINE

Every police agency immediately should formalize policies, procedures, and rules in written form for the administration of internal discipline. The internal discipline system should be based on essential fairness, but not bound by formal procedures or proceedings such as are used in criminal trials.

1. Every police agency immediately should establish formal written procedures for the administration of internal discipline and an appropriate summary of those procedures should be made public.

2. The chief executive of every police agency should have ultimate responsibility for the administration of internal discipline.

3. Every employee at the time of employment should be given written rules for conduct and appearance. They should be stated in brief, understandable language. In addition to other rules that may be drafted with assistance from employee participants, one prohibiting a general classification of misconduct, traditionally known as "conduct unbecoming an officer," should be included. This rule should prohibit conduct that may tend to reflect unfavorably upon the employee or the agency.

4. The policies, procedures, and rules governing employee conduct and the administration of discipline should be strengthened by incorporating them in training programs and promotional examinations, and by encouraging employee participation in the disciplinary system.

STANDARD 19.2.—COMPLAINT RECEPTION PROCEDURES

Every police agency immediately should implement procedures to facilitate the making of a complaint alleging employee misconduct, whether that complaint is initiated internally or externally.

1. The making of a complaint should not be accompanied by fear of reprisal or harassment. Every person making a complaint should receive verification that his complaint is being processed by the police agency. This receipt should contain a general description of the investigative process and appeal provisions.

2. Every police agency, on a continuing basis, should inform the public of its complaint reception and investigation procedures.

3. All persons who file a complaint should be notified of its final disposition; personal discussion regarding this disposition should be encouraged.

4. Every police agency should develop procedures that will insure that all complaints, whether from an external or internal source, are permanently and chronologically recorded in a central record. The procedure should insure that the agency's chief executive or his assistant is made aware of every complaint without delay.

5. Complete records of complaint reception, investigation, and adjudication should be maintained. Statistical summaries based on these records should be published regularly for all police personnel and should be available to the public.

STANDARD 19.3.—INVESTIGATIVE RESPONSIBILITY

The chief executive of every police agency immediately should insure that the investigation of all complaints from the public, and all allegations of criminal conduct and serious internal misconduct, are conducted by a specialized individual or unit of the involved police agency. This person or unit should be responsible directly to the agency's chief executive or the assistant chief executive. Minor internal misconduct may be investigated by first line supervisors, and these investigations should be subject to internal review.

1. The existence or size of this specialized unit should be consisent with the demands of the work load.

2. Police agencies should obtain the assistance of prosecuting agencies during investigations of criminal allegations and other cases where the police chief executive concludes that the public interest would best be served by such participation.

3. Specialized units for complaint investigation should employ a strict rotation policy limiting assignments to 18 months.

4. Every police agency should deploy the majority of its complaint investigators during the hours consistent with complaint incidence, public convenience. and agency needs.

STANDARD 19.4.—INVESTIGATION PROCEDURES

Every police agency immediately should insure that internal discipline complaint investigations are performed with the greatest possible skill. The investigative effort expended on all internal discipline complaints should be at least equal to the effort expended in the investigation of felony crimes where a suspect is known.

1. All personnel assigned to investigate internal discipline complaints should be given specific training in this task and should be provided with written investigative procedures.

2. Every police agency should establish formal procedures for investigating minor internal misconduct allegations. These procedures should be designed to insure swift, fair, and efficient correction of minor disciplinary problems.

3. Every investigator of internal discipline complaints should conduct investigations in a manner that best reveals the facts while preserving the dignity of all persons and maintaining the confidential nature of the investigation.

4. Every police agency should provide—at the time of employment, and again, prior to the specific investigation—all its employees with a written statement of their duties and rights when they are the subject of an internal discipline investigation.

5. Every police chief executive should have legal authority during an internal discipline investigation to relieve police employees from their duties when it is in the interests of the public and the police agency. A police employee normally should be relieved from duty whenever he is under investigation for a crime, corruption, or serious misconduct when the proof is evident and the presumption is great, or when he is physically or mentally unable to perform his duties satisfactorily.

6. Investigators should use all available investigative tools that can reasonably be used to determine the facts and secure necessary evidence during an internal discipline investigation. The polygraph should be administered to employees only at the express approval of the police chief executive.

7. All internal discipline investigations should be concluded 30 days from the date the complaint is made unless an extension is granted by the chief executive of the agency. The complainant and the accused employee should be notified of any delay.

STANDARD 19.5.—ADJUDICATION OF COMPLAINTS

Every police agency immediately should insure that provisions are established to allow the police chief executive ultimate authority in the adjudication of internal discipline complaints, subject only to appeal through the courts or established civil service bodies, and review by responsible legal and governmental entities.

1. A complaint disposition should be classified as sustained, not sustained, exonerated, unfounded, or misconduct not based on the original complaint.

2. Adjudication and—if warranted—disciplinary action should be based partially on recommendations of the involved employee's immediate supervisor. The penalty should be at least a suspension up to 6 months or, in severe cases, removal from duty.

3. An administrative factfinding trial board should be available to all police agencies to assist in the adjudication phase. It should be activated when necessary in the interests of the police agency, the public, or the accused employee, and should be available at the direction of the chief executive or upon the request of any employee who is to be penalized in any manner that exceeds verbal or written reprimand. The chief executive of the agency should review the recommendations of the trial board and decide on the penalty.

4. The accused employee should be entitled to representation and logistical support equal to that afforded the person representing the agency in a trial board proceeding.

5. Police employees should be allowed to appeal a chief executive's decision. The police agency should not provide the resources or funds for appeal.

6. The chief executive of every police agency should establish written policy on retention of internal discipline complaint investigation reports. Only the reports of sustained and—if appealed—upheld investigation should become a part of the accused employee's personnel folder. All disciplinary investigations should be kept confidential.

7. Administrative adjudication of internal discipline complaints involving a violation of law should neither depend on nor curtail criminal prosecution. Regardless of the administrative adjudication, every police agency should refer all complaints that involve violations of law to the prosecuting agency for the decision to prosecute criminally. Police employees should not be treated differently from other members of the community in cases involving violations of law.

STANDARD 19.6.—POSITIVE PREVENTION OF POLICE MISCONDUCT

The chief executive of every police agency immediately should seek and develop programs and techniques that will minimize the potential for employee misconduct. The chief executive should insure that there is a general atmosphere that rewards self-discipline within the police agency.

1. Every police chief executive should implement, where possible, positive programs and techniques to prevent employee misconduct and encourage self-discipline. These may include:
   a. Analysis of the causes of employee misconduct through special interviews with employees involved in misconduct incidents and study of the performance records of selected employees;
   b. General training in the avoidance of misconduct incidents for all employees and special training for employees experiencing special problems.
   c. Referral to psychologists, psychiatrists, clergy, and other professionals whose expertise may be valuable; and
   d. Application of peer group influence.

RECOMMENDATION 19.1.—STUDY IN POLICE CORRUPTION

It is recommended that a national police-supported organization such as the International Association of Chiefs of Police be commissioned by the Law Enforcement Assistance Administration to study the conditions that have led to reduction or elimination of corruption in police agencies and have been successful in dealing with this problem. This research should not focus on police agencies where corruption is currently widespread.

RECOMMENDATION 20.1.—POLICE OFFICER BENEFITS FOR DUTY-CONNECTED INJURY, DISEASE, AND DEATH

It is recommended that Congress extend the benefits of Title 5, Section 8191, of the United States Code to every Federal, State, and local law enforcement officer who in the performance of any police duty is killed, injured, or contracts a sustaining disease.

Mr. McKevitt. There is another thing that I should comment on.

Mr. Eilberg. Would you do that.

Mr. McKevitt. Yes, I certainly will. Pardon me.

So far as the standards about height requirements are concerned, these are not mandatory, but merely guidelines to point out that there are abuses, particularly for certain races, such as Spanish surname, and also women. It was felt that it was a thing that should be called to the attention of police agencies.

Mr. Eilberg. Shall we make this quorum call and come right back?

Mr. Wiggins. Would you give us some guidance on when you are going to break for lunch?

Mr. Eilberg. I am anxious that you, Congressman Wiggins, and you, Congresswoman Holtzman, come back, particularly since the next set of hearings should be of special interest to you. I propose that as soon as we finish with Mr. McKevitt, we will temporarily set these hearings aside.

Mr. Wiggins. I only had one question of Mike, if you do not mind.

Mr. Eilberg. Go ahead.

Mr. Wiggins. I will put it to you now, Mike. What would be your impression of an amendment to the Safe Streets Act requiring inclusion in the State plan of a proposal for dealing with law enforcement officers grievances, without specifying the elements of it at all but simply requiring that the State planning agencies develop such a plan and that be the extent of the Federal involvement, simply mandating that they must have a plan, but that it, of course, be their own plan?

Mr. McKEVITT. From the administration standpoint, they are trying to get away from mandates to State planning agencies and get more into a revenue-sharing concept. So, I think probably we would have some administration objection on it.

I think a lot of your grievances depend upon how good your police commissioner or your police chief or your mayor are, and a lot of it depends upon attitudes. It is like there is the old saying that the police union membership increases as morale decreases and vice versa. We have found this to be true in the police scandal investigation in Denver. A lot of it has to emanate, I think, from leadership and they do have to see the light.

Obviously, there has to be a middle ground because I certainly do not want to distract from Congressman Biaggi's point which is another good one that there are considerable abuses. And yet another thing, as a district attorney, Bill Kahn, from Nassau County, pointed out once, every law enforcement body and every prosecutorial function is different in nature. The American Bar sent over $1 million to do a study to find out that he said each one of these places had a different problem, and he said he could have saved them that $1 million and told them that, but the problem is that you do have all of these local and distinct problems. On review, what types of reviews? You raise a good point that there should be some review, but if you have a review procedure, the next question is how is it going to be implemented, and so forth.

Mr. WIGGINS. I was merely seeking some middle ground. We have used this device before by compelling States to at least develop their own plan, without telling them what that plan should be.

Mr. McKEVITT. Sometime maybe, through LEAA funding, it would be an encouragement to set up a model plan, which others could follow. For example, the National District Attorneys' Association now is getting in office management programs because a lot of the district attorneys' offices have been under extremely poor management for years, and there are new concepts being developed.

I think the same thing is true with police agencies. IACP has had an input, and I think there is a long way to go. But, pardon me, I am pushing on the three bills.

[The prepared statement of Hon. James D. (Mike) McKevitt follows:]

STATEMENT OF HON. JAMES D. (MIKE) McKEVITT, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS

Mr. Chairman, it is a pleasure to be here today to discuss the views of the Department of Justice on the bills now pending before your Subcommittee to provide benefits to the survivors of public safety officers. In addition, I will present the Department's position on the legislation to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several states.

With respect to survivors benefits for public safety officers, the three bills under consideration today—H.R. 12, introduced by Mr. Rodino; H.R. 6649, the Administration's proposal; and S. 15, the Senate-passed bill—each provide for the payment of $50,000 to the dependent survivors of public safety officers killed in the line of duty. H.R. 6649 and S. 15 would require that the death be the result of a criminal act or apparent criminal act, while H.R. 12 would cover accidental deaths in a wide variety of circumstances. For the most part, each bill would provide coverage for the same categories of public safety officers, namely police and firemen, correctional officers, and certain court personnel.

As you know, Mr. Chairman, proposals of this nature have been before the Congress for about two years. The first was sponsored by the Administration and introduced in June, 1971, as H.R. 9139 and S. 2087. The latter, as amended, passed the Senate in September, 1972, and a House bill sponsored by Mr. Rodino—H.R. 16932—passed in October of last year. Even though the members of the Conference Committee reached agreement, no law was enacted during the 92nd Congress.

The purpose of the bills of course was to fashion a federal response to the substantial, nationwide problem of police murders. During 1971. the year that the death gratuity proposal originated, 126 law enforcement officers died as a result of felonious activity. Last year, 112 police were killed by criminal acts, and for the first six months this year, about 70 have been slain.

While no amount of money will solve this terrible problem, a $50,000 gratuity could go a long way toward aleviating the financial shock which often accompanies the sudden death of the wage-earner. The Administration initially chose such an approach because it was determined that death benefits vary from state to state, and in some cases do not exist at all. The lump-sum payment was proposed as an attempt to provide a federal base or floor for such benefits, so that all survivors would receive adequate financial support regardless of the inadequacy or non-existence of state or local programs.

This was deemed to be appropriate action for the federal government since the murders were occurring across the nation without regard to state boundaries, and since a lump-sum payment would in no way interfere with the prerogatives of state and local governments with respect to routine employment benefits.

Despite the Department's strong support for the concept of a death gratuity, there are significant differences among the three bills which I would like to bring to the Subcommittee's attention. For the reasons I will discuss, I believe that H.R. 6449, the Administration's proposal, embodies the best means of achieving the objective.

While the bills for a death gratuity for public safety officers killed in the line of duty, H.R. 6449 and S. 15 would require that the death be the result of a criminal act or apparent criminal act, whereas H.R. 12 would not. The Department believes that such a requirement is consistent with federal responsibility in this area. We are of the opinion that the proposal should be designed to deal solely with the slaying of public safety officers and not with accidental deaths. Accidental death is a hazard of many types of employment, and we are aware of no rationale which would suggest federal intervention in these situations. Providing survivor's benefits for those who are killed accidentally should be the responsibility of the employer in the same manner as other employment benefits. The murdering of public safety officers, however, is an act which attacks the very essence of a stable society and puts in jeopardy the well being of our country. For this reason we believe that federal assistance is appropriate in these limited instances.

I would also like to point out that the Administration's bill would eliminate any duplication of coverage in situations where the circumstances of an officer's death would make his survivors eligible for assistance from more than one federal program. Each bill under consideration today would provide that the death gratuity would be in addition to any other benefits that might be due the survivors. H.R. 6449, and S. 15 to a limited degree, would make specific exceptions to this rule to avoid any potential inequities. As an example, H.R. 6449 would reduce the $50,000 benefit by any amount authorized by 5 U.S.C. 8191, which provides for the awarding of federal employees' compensation benefits to local law enforcement officers killed while performing a federally related function, such as apprehending a person wanted for a federal offense. If the death gratuity were not reduced by the amount of the benefits under section 8191, a situation could arise where an officer would be eligible for duplicate coverage. This would create an inequity with respect to public safety officers who qualify under only one program. Therefore, we would recommend that the subcommittee consider this point in its deliberations.

Permit me to mention in addition that H.R. 6449 and S. 15 each provide for the awarding of interim benefits of up to $3,000 prior to a determination by LEAA as to whether a final benefit will be paid. We believe that such a provision is worthwhile so as to offset the immediate financial shock that could well occur upon the death of the wage-earner. In situations where an ultimate benefit will probably be paid, it would appear reasonable to permit LEAA to provide immediate short term assistance. This interim benefit of course would be deducted from the $50,000, and could be recovered in cases where a final award is not made. Under H.R. 6449, LEAA would be required to consider the hardship that might result if repayment were ordered.

The Administration's proposal, unlike both H.R. 12 and S. 15, also establishes the basic procedural framework which would apply in all cases where benefits are applied for. Under H.R. 6449, the applicant would have to notify the appropriate state official who in turn would be required to inform LEAA of the pendendency of an investigation of the facts of the case. After the investigation. the state official would then certify the relevant facts to LEAA. LEAA would then make its decision upon the basis of these facts. Thus while there is nothing unique about this procedure it would have the benefit of placing the responsibility for the initial investigation and certification upon those officials closest to the events. Such procedures could, of course, be established by regulations, but it would appear useful to outline the basic application process in the statute.

Finally, S. 15 provides that the benefits would become effective and apply to acts and deaths occurring on or after October 17, 1972, the date of the conference report from the 92nd Congress on S. 2087. While the Department is sympathetic to the hardships faced by many survivors of public safety officers, we believe that when new benefits are statutorily created they should only apply prospectively unless there is a compelling reason for determining a date for retroactive application. In this case, we are of the opinion that there is no fair way to choose such a date. The choice of any arbitrary date would be inequitable. For this reason, we suggest that fairest resolution of this problem would be to make the benefits apply prospectively only.

This, Mr. Chairman, completes my discussion of death gratuity legislation. In conclusion I would like to say that the Department of Justice strongly supports the concept of a $50,000 payment to the survivors of public safey officers killed in the line of duty as the result of a criminal act and for the reasons I have outlined we believe that H.R. 6449 provides the best approach to the problem.

I would now like to direct my attention to H.R. 163, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several states.

The bill would make planning and action grants from the Law Enforcement Assistance Administration contingent upon the establishment of a formalized procedure for handling the complaints of law enforcement officers and the adoption of a so-called bill of rights for such officers in each state and local unit of government. The grievance procedure and bill of rights would have to be in effect within one year of enactment. The bill of rights would have to deal with such subjects as political activity by policemen, their rights while under investigation, their representation on any police review boards, their right to bring civil suits, the disclosure of finances, notice with respect to disciplinary action, and the establishment of a grievance commission.

The Department believes that many of the features of H.R. 163, including the rights contemplated in the bill, should be adopted by law enforcement agencies at the state and local level. However, we are of the opinion that it is not a proper role for the federal government to impose such rights, as a condition for the receipt of LEAA funds. In essence, the legislation would do no more than establish certain working conditions or employment benefits for law enforcement officers. In our view, the decision to accept or reject these conditions or benefits should be based upon the unique factors of each individual agency in much the same way as salary, insurance benefits and other features of employment are determined. To do otherwise would be to encroach upon the traditional prerogatives of the states and local units of government.

This philosophy of course is embodied in the Safe Streets Act of 1968. Section 518 of the Act states that "Nothing contained in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement agency of any State or any political subdivision thereof." H.R. 163 would appear to abandon this philosophy in favor of direct federal intervention and control. We believe that this would establish a very unfavorable precedent, especially in light of our recent proposal to return more control over LEAA funds to the states.

We would like to point out, however, that a great deal of time and effort has been devoted by the National Advisory Commission on Criminal Justice Standards and Goals to the specific subject of police officers' rights. In fact, the final report of the Commission, to be published soon, addresses many of the issues raised by H.R. 163 and promulgates certain standards for the consideration of all law enforcement agencies. We are hopeful of course that many of the recommendations will be voluntarily adopted. I would like to mention that a copy of the standards has been submitted to the Subcommittee and I would commend it to your attention.

In summary then, while the Department would like to see many of the provisions of H.R. 163 adopted on a voluntary basis, we are unable to support the bill as being an unwarranted intervention by the federal government into the strictly local affairs of these agencies.

Ms. Holtzman. I just wanted to make a comment along with what Congressman Wiggins said. LEAA has discretionary funds and they might think about using this to encourage, at least a few municipalities, to develop at least some of these model guidelines.

Mr. Wiggins. I doubt that would even require legislation.

Mr. Eilberg. Do you have anything further?

Ms. Holtzman. No, Mr. Chairman.

Mr. Eilberg. I think we will then conclude these hearings now but this does not mean that we will not reopen them at a later time.

I hesitate to open the hearings to the public at large until we have gone considerably into the subject and I do not know about the necessity. We invite statements, however, from all interested parties and I know that some officials have been here and I hope that in your statements you will cover any points you feel are important or appropriate. We would like to have as much input as possible at this point.

We will close the hearings and not continue them unless the committee decides later that we need to have further hearings.

It is now 20 minutes to 1 and can we come back at 1:15 after we have a bite of lunch and then start on the other set of hearings.

Mr. Wiggins. I wonder if it is physically possible for our witnesses to get a bite of lunch as quickly as we can get a bite of lunch. I do not know that, but I just wondered if they could actually have lunch and be back?

Mr. Eilberg. Could the witnesses be back in about half an hour? Could you manage somehow? We will be back here at 1:30.

[Whereupon, at 12:50 p.m., the hearing was concluded, subject to the call of the Chair.]

CORRESPONDENCE AND ADDITIONAL STATEMENTS

STATEMENT OF HON. FRANK ANNUNZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, IN SUPPORT OF H.R. 269

Mr. Chairman and members of this subcommittee, I feel it is a great privilege to testify today in support of H.R. 269, a bill to create a Law Enforcement Officer's Bill of Rights.

I am proud to be one of the sponsors of legislation to create a Bill of Rights for law enforcement officers, and I am gratified to see the increasing attention that this issue is receiving.

This legislation would provide law enforcement officers many of the basic rights that our other citizens now take for granted. H.R. 269 would insure the right of a police officer to engage in political activity during his off-duty time. as well as guaranteeing police officers the same civil rights enjoyed by all other citizens. Moreover, it would set up a grievance panel to hear the grievances of police officers who claim their civil rights have been violated, and finally, it would deny Law Enforcement Assistance Administration funds to any community that did not conform to the provisions of this bill.

I believe all would agree that these are not unfair requests for a policeman to ask from society, and yet these very rights are often cruelly denied our policemen throughout the country.

It is true that our law enforcement officers maintain a very special place in our society. They are our protectors, they represent our laws on a more basic level than most of our public servants. They *uphold* the law, and are very often the only visible symbol of authority that the average citizen constantly sees. Perhaps this is why, when a policeman has looked for support from his community, he has frequently been met with a hostile attitude from the very people he seeks to protect. People tend to resent authority—it is in our human nature; that is why our policemen are so often the tragic victims of a frustrated individual's plot to revenge himself upon society.

And that is why it is necessary to pass this legislation as quickly as possible. As our policemen protect us, we need to protect them.

A law enforcement officer's job is never easy. With long hours and little pay, he is constantly subjected to dangers, harassment and demands. He is the man in the middle attempting to mediate problems he did nothing to create—why should he be the victim of his duty-bound intervention? Sometimes our police are charged with gross negligence or harassment through no fault of their own. If a policeman has to defend himself in court for actions he had to take while performing his duty, it is often at great financial risk.

Our police cannot accord a costly lawsuit, not only for financial reasons, but also because it directly affects the quality of their work.

I feel the passage of this Bill of Rights would serve to draw deserved attention to the plight, and the rights, of our law enforcement officers. If things were as they should be, we would not have to pass legislation like this at all. We in the Congress should be the first to support the outstanding job our policemen do across the Nation. The fundamental protection that the Policeman's Bill of Rights would insure can serve as a further bridge of understanding between our law enforcement officers and the countrymen they try to protect.

STATEMENT OF HON. TOM BEVILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman and Members of the Committee, I appreciate this opportunity to express my support for H.R. 4598, the Policemen's Bill of Rights.

In today's complex and often violent society, our police officers serve as the first line of protection against lawlessness and destruction. However, police officers today often discover that they are in the unfortunate situation of having to enforce the law and protect the rights of others, yet they are denied the same fundamental rights.

This bill, which is before you today, would amend the Omnibus Crime Control and Safe Streets Act. It would establish a nine point Bill of Rights that would provide law enforcement officers with statutory protection for certain rights enjoyed by other citizens.

The basic points of the bill are:

> The civil rights of policemen be recognized when they are subjects of interrogation and investigation.
>
> Policemen may bring civil suits against others when they suffer violation of their civil rights arising out of the performance of their duties.
>
> A grievance commission be established in each state to hear and judge policemen's complaints of infringement of their civil rights.
>
> Policemen have the right to engage in political activity when off duty and out of uniform.

Federal court decisions now guarantee that even inmates in prison may call witnesses, cross examine and, most importantly, be represented by legal counsel. Yet in case after case, policemen in America are being denied those very rights.

Mr. Chairman, passage of this legislation would provide our law enforcement officers with protection against slander and harassment· It seems to me that this is little enough to do for these brave men.

I respectfully urge the Committee to give favorable consideration to this important bill.

Thank you.

STATEMENT OF GEORGE E. BROWN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and Members of this Committee, the United States Constitution and Bill of Rights has served to safeguard the civil liberties and property of the American people since nationhood.

Yet, there is one group in this country which has been deprived of the same inalienable rights and privileges other citizens enjoy. It is ironic that the group to which I am referring, law enforcement officers, are charged with defending the very same civil liberties which they are denied.

For this reason, I co-sponsored H.R. 9035 and submit this statement in support of Congressman Biaggi's identical bill, H.R. 4598.

Congressman Biaggi's bill establishes a just and equitable Law Enforcement Officers' Bill of Rights which provides for such fundamental liberties as the right to have counsel present during administrative proceedings, the right to bring suit for damages arising out of official duties and the freedom to become involved in political activities when off duty. It also creates a well balanced grievance commission to enforce the articles of the Bill of Rights.

Mr. Edward J. Kiernan, President of the International Conference of Police Associations has sighted several recent examples of Constitutional violations of police officers' rights, which dramatizes the need for this type of legislation. I will cite two current cases, but must withhold names to protect the officers involved.

In May of 1969 at 2:00 A.M., a New York City policeman was taken from his bed by two department investigators to an undisclosed location in Manhattan and held incognito for thirty-six hours. The Patrolman's Benevolent Association finally located him and secured his release.

Another New York City patrolman went through normal procedure and submitted his retirement papers which were due to be considered on the following Monday in January of 1973. Department investigators went to his home on that weekend and threatened to arrest him if he didn't withdraw his retirement papers. He agreed to their demand and that Monday was suspended, and eventually exonerated.

H.R. 4598 would protect law enforcement personnel and their families from that kind of intimidation and abuse which is more reminiscent of Nazi Germany than the United States of America.

Presently, the policeman has no recourse under law except to forward his complaint to the precinct chief. Usually, the chief is the man responsible for the complaint. The patrolman is forced either to accept a biased decision or go to court. The latter is not only time consuming and expensive, but serves to destroy morale and create hostilities within the police force.

Some states such as Washington and New York have adopted segments of H.R. 4598, but this piecemeal approach would take twenty years to reach completion. I believe, if we are to attract the best qualified personnel to law enforcement, the Congress must enact the kind of progressive, nationwide legislation that Congressman Biaggi is proposing.

Mr. Chairman, I appreciate the opportunity to appear before you on this very important legislation. We expect the police officer to risk his life daily, and endure frequently unwarranted abuse during the course of his duty, protecting and serving the general public. Policemen have earned the right to be elevated to the position of first class citizens.

I commend the Subcommittee for its diligence in pursuing this legislation.

STATEMENT OF HON. J. HERBERT BURKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

H.R. 4477, H.R. 163, AND H.R. 4598—POLICEMEN'S BILL OF RIGHTS

Mr. Chairman, I would like to thank you and the members of this Subcommittee for the opportunity to appear before you and join with the other cosponsors of similar legislation in expressing my support for legislation to provide a system for the redress of grievances of law enforcement officers and for the establishment of a law enforcement officers bill of rights which would become applicable to each of the several states.

I am sure you have been concerned as I have, about the continuous increase in crime during the last decade. There is no question of whose duty it is to control crime because the control of crime is important to each and every American. We cannot control crime until we want it controlled, and until we recognize that our law enforcement officers have undertaken this hazardous duty for us. It seems inconsistent to me that our system of law, and the enforcement thereof, should be held up to ridicule as so often is the case by the many in our country who should know better. These bleeding hearts take it upon themselves to feel sorry for the criminals, often unjustifiably, and in most cases at the expense of our law officers, and do an injustice not only to those who are trying to control the criminals, but to their fellow citizen as well.

As for me, I prefer to support our law enforcement officers, who regrettably, today, are more often than not subjected to scorn for doing their job and protecting our citizens than is the criminal who walks at night.

However, as if the scorn heaped upon his shoulders is not enough, a law enforcement officer must, in addition, take the role as a second class citizen under the very laws he is sworn to enforce. We must have first class police officers if we are to control crime, and these officers should be treated properly if we are to maintain them in the positions of law enforcement officers.

Under the terms of my bill, H.R. 4477, States would be required to include two additional provisions in their Comprehensive Plans for grants under the Omnibus Crime Control and Safe Streets Act of 1968. One of these provisions would require that a system for the receipt, investigation and determination of complaints and grievances be provided for law enforcement officers of the State, units of general local government and public agencies. The other provision would require the formulation of a "Law Enforcement Officers' Bill of Rights" which would provide statutory protection for the constitutional rights and privileges of all law enforcement officers.

It is ironic that after all the screening, testing and training done by various governmental units to assure that only the finest men and women serve on our police forces that we feel we must curtail their rights as citizens.

What is so wrong in letting law enforcement officers engage in (or refuse to engage in) political activity? Certainly they should have the political rights of anarchists who are granted that political privilege.

Why shouldn't law enforcement officers under investigation be given the same consideration as criminals? Certainly they should be entitled to knowledge of the time and place of any interrogation to which they might be subjected. They should know the nature of the complaint and the names of the complainants, together with information as to the complaints sworn to in the same manner as any other person. They should also be assured that any interrogations will be of a reasonable duration, and that no intimidations or threats will be made without disclosure of the same and the interrogations should be recorded if a demand for it is made.

To me it is basic that our law officers be entitled to information as to their legal rights, and that they should be entitled to representation by legal counsel if requested. The most degenerate members of our society have such privileges and so too do the poor and the affluent. Why then should our law enforcement officers be denied these rights which are authorized for all the rest of our society?

There are too many citizens of the United States who worry far too much about civil rights and far too little about the power of the criminal elements of our society. We protect very jealously the rights of people under criminal investigation, but, we often fail to concern ourselves with the rights of policemen who find themselves in a similar situation. Certainly it would be naive to think that all policemen are "good guys" who are going to obey the law all of the time. But, then, it is just as naive to think that all of our people will obey the law all of the time. We all know that there are always bad apples in any barrel, but, we should guarantee that our police are granted the constitutional presumptions that others are, i.e., that they are innocent until proven guilty, when charged with a wrong.

If we are to combat crime effectively, we must first restore respect for ourselves, our nation, and our heritage. Our policemen and other law enforcement officers are part of our security. Mutual respect among all segments of our society will be most effectively realized if we restore equal treatment under our laws for all—including policemen and other law enforcement officers.

STATEMENT BY HON. GOODLOE E. BYRON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

H.R. 163 AND H.R. 4598—POLICEMEN'S BILL OF RIGHTS

Mr. Chairman, I am grateful for having the opportunity to comment on the Policemen's Bill of Rights before the Committee on Judiciary. I have co-sponsored this legislation since being in Congress, and I am grateful that this committee has decided to hold hearings. I would like to urge favorable consideration of this important legislation.

Our courts rightly require full due process for those arrested; however, our law enforcement officers are placed in a very special category—they are only entitled to enforce the law, not enjoy its benefits. The Policemen's Bill of Rights is designed to rectify this situation. This legislation would guarantee civil rights to all law enforcement officers. The present situation for all practical purposes denies the right of policemen to seek civil redress of grievances.

In one nine month period in 1970, 84 law enforcement officers were reported killed in the line of duty in the United States. The danger inherent in the profession makes it incumbent on us to provide at least basic recognition of the rights of law enforcement officers. The denial of these rights has been the source of disenchantment and even despair with the whole system of criminal justice on the part of many policemen.

I commend this legislation to your committee, Mr. Chairman, and I urge that it be favorably considered for action on the floor of the House. I thank you for this opportunity to express my thoughts on the need for a Policemen's Bill of Rights.

STATEMENT BY HON. DONALD D. CLANCY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, in the interests of those men and women who are the primary defenders of our homes, properties, lives and rights, I thank you for this opportunity to speak on behalf of two bills, commonly titled:

Policemen's Bill of Rights
Public Safety Officers' Benefits Act

It is a sad commentary on our time that a widespread disrespect verging on malice has grown against American law enforcement and public safety officers. These men who are charged with preserving order and enforcing our laws are cursed, reviled, spat upon, too often shot at and killed. In the last three years, the numbers of officers killed in the performance of their sworn duties has doubled over a decade ago. Last year, 112 were slain; the year before that, 126. Here in the Nation's Capital we are reminded of the perils to public safety officers every time a firetruck races by in an effort to save someone's home or property. The firemen huddle under canopies to protect them from thrown bricks, bottles and similar missiles.

Today's officers may be the most heroic in our history. While they must be alert and cautious for their own safety, they are called upon to curb crime that edges close to becoming uncontrollable. They must do their jobs amid a tangle of legalities and paperwork that defy simplicity and common sense. A modern policeman must have the reflexes and physical well-being of an athlete, the daring and courage of a death-defying diver, the temperament of a turtle, the judgement of a sage and the knowledge of a lawyer.

In a split second, he must decide whether or not to dash down a dark alley after a shadowy figure. He must be ready to brave a fusillade of bullets if the figure is a desperado. He is justified in attacking only if first attacked or imminently threatened. Even when he has ruined his uniform in pursuit, even after he has been bruised and bloodied while making an arrest, he must be considerate and advise his prisoner of his rights. Where seconds before the policeman may have been the strong, fearless and unrelenting pursuer, at the moment of arrest, he must change and become the protector of the prisoner and his rights.

For too long, we have neglected the rights of our protectors. The legislation which you consider today would guarantee those rights and establish a Law Enforcement Officers' Bill of Rights and a grievance commission in each state to preserve their rights. Policemen could file lawsuits against persons who maligned or attacked them while they performed their duties. Persons with complaints who wanted redress against an officer, would have to file an action and the officer then would have the right to know his accuser. The rights against an intimidating interrogation which we have been guaranteeing these many years to criminals would finally be given also to our policemen.

Surely with the assurance in mind that their rights, too, are guaranteed, our police could proceed with more confidence and concentration about their supremely important task of preserving law and order.

No! There is one more thing that nags at the subconsciousness of our public safety officers. There is no guarantee, there can be no guarantee that they will not be killed. Most officers are good family men and there is no guarantee that their widows and children will not fall on hard times if he is killed.

For that reason, I introduced H.R. 5121 which is similar to H.R. 12. They would provide $50,000 to the survivor or survivors of a lawman or fireman killed in the line of duty. A fund would be set up to accomplish this and pay the survivors' benefits.

I believe that these two measures, if enacted into law, ultimately will be strong crime controls. They demonstrate conclusively our support for our policemen and firemen. They will provide ease-of-mind to police and firemen so they can give their full attentions to protection of the citizenry and war against crime. Too many men have given their last full measure of devotion to duty. It is past time that we guarantee the rights of our policemen and the security of the families of our public safety officers.

STATEMENT OF HON. T. J. DULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I appreciate having this opportunity to make a statement in behalf of legislation to grant basic civil rights to a sector of our society that we have neglected for too long.

My distinguished colleague, Congressman Biaggi, has already stated the purpose of the bill, which I have co-sponsored. He is eminently well qualified to explain the need for a Bill of Rights for policemen, and I am pleased to associate myself with his remarks.

Certainly, there is no justice in a system which protects the rights of criminals and suspected lawbreakers, but refuses those same rights to the men and women charged with enforcing the laws.

It has been argued that the Federal government should not require State and local governments to pass laws setting up standards for the civil rights of law enforcement officers as a prerequisite of eligibility for Federal grants. That argument simply does not hold water.

Establishing civil rights for previously disenfranchised ethnic and racial minority groups is a basic condition of many of our Federal grant programs, and those rights are as detailed as the ones in this legislation. We require the States and local governments to meet strict standards of environmental safeguards, safety and health hazard controls, and to conform to criteria in other areas before allotting Federal money to them. It is neither inconsistent nor unrealistic to set uniform protective standards for law officers.

The said fact is, as has often been repeated, that we have allowed policemen to become "second-class citizens". We have the means of giving these public defenders the same dignity and rights to full protection of the law as we have extended to the public. I respectfully urge the Committee to report this legislation favorably at an early date.

STATEMENT OF HON. WILLIAM D. FORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Speaker, as a legislator both in the Michigan State Senate and here in the U.S. Congress, I have always vigorously supported legislation designed to assist law enforcement officers in their roles as society's protectors and defenders. They are often the victims of official intimidation and citizen harassment. Frequently, they are the targets of frivolous lawsuits for which they must seek legal aid.

These are among the reasons for my introduction of legislation which would authorize the Attorney General of the U.S. to make grants to any law enforcement official who is a defendant in any civil action which arises out of the law officer's performance of his official duties, to reimburse the officer for the reasonable costs of defending himself if he prevails in the civil action.

Yet, although my proposed legislation is a step forward, there is more that can be done for our law enforcement officials.

I believe that the Law Enforcement Officers Bill of Rights, introduced by my distinguished colleague, Mr. Biaggi, is an excellent vehicle for the expression of our gratitude and concern for these men who every day risk their lives on our behalf.

I think we would all agree that the job of the law enforcement officer is a thankless one. The hours are long, the salaries low and the conditions dangerous. Yet, knowing this, we still add insult to injury by refusing them the rights basic to American citizens, rights that we all take for granted.

Among the provisions of the bill is a declaration of the rights of law enforcement officers under investigation including the privilege of being represented by counsel during interrogation. I have heard of several instances where police officers were forced to submit to polygraph tests and hours of interrogation by superiors when they are accused of misconduct within the Department or of criminal charges. If a policeman refuses to submit to these interrogations, he faces dismissal.

Because I feel that payment of our debt to these dedicated men is long overdue, I wish to join Mr. Biaggi and many of our colleagues in their determined efforts to provide police officers with the rights to which they are entitled by urging the prompt passage of the Law Enforcement Officers Bill of Rights.

STATEMENT OF HON. ELLA T. GRASSO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, this Subcommittee is presently considering legislation to provide financial security for the survivors of policemen and firemen killed in the line of duty, and to protect the civil rights of policemen.

One bill, H.R. 3980, which I introduced, would provide $50,000 in benefits to the survivors of policemen and firemen killed in the line of duty. The other bill, H.R. 4600, which I am cosponsoring, would establish measures to protect the civil rights of all law enforcement officers.

Each day, policemen and firemen face countless hazards in the performance of their duties. In addition to these dangers, in recent years public safety officers have increasingly become targets of violence. The overall rise in the national crime rate has meant that public safety officers and their families must live with the knowledge that they will have to deal with an increasing number of violent incidents.

Therefore, these public safety officers should receive adequate compensation for the risks that they take in behalf of all citizens. Providing some financial security for their families in the event of their untimely death is the least we can do in return. Most of those killed in the line of duty in the past few years have been young, struggling family men whose wives and children have great need of the benefits a uniform federal law would provide. As John C. Burns, Chairman of the Legislative Committee of Connecticut's Veterans of Foreign Wars, wrote to me recently, "We sincerely believe that any officer who risks so much be able to feel a sense of security to know that his dependents can expect, at least. that he will have provided some financial security should the risk involved in his hazardous duty cause his death. While we know that no financial settlement can replace a beloved spouse or father, we still feel that this type of legislation is vitally needed."

Late in the 92nd Congress, legislation similar to a bill I cosponsored to provide survivors benefits passed both Houses. Unfortunately, Congress adjourned before taking final action on the bill. I am certain that, in light of the support shown for this legislation in the Congress, the Subcommittee will decide to report it favorably.

On another issue. Mr. Chairman. unlike the citizens he is sworn to protect, the policeman often finds himself without certain civil rights. To rectify this situation, H.R. 4600 would create a "Policemen's Bill of Rights." One provision of the measure would establish a grievance commission in each state to hear policemen's complaints about infringement of their rights. Other provisions would allow policemen to engage in political activity when off duty and out of uniform, and would allow them to bring civil suits against those violating their civil rights during the performance of their duties. The bill would also specify a policeman's rights when he is under investigation or questioning.

Mr. Chairman, our law enforcement officers and other public safety personnel are dedicated public servants. They deserve our strong support and encouragement. Enactment of H.R. 3980 and H.R. 4600 would assure the legal rights and provide the benefits which they deserve. I urge the Subcommittee to include the language of both bills in whatever legislation it reports to the full Committee.

STATEMENT OF HON. CHARLES S. GUBSER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, today I would like to speak on behalf of a minority group—our police.

It is perhaps ironic to term our police a minority group, although in the strictest definition of the word they are certainly a numerical minority. They are all citizens of the United States, and most people around the world consider our citizens to be among the most privileged individuals anywhere. Moreover, our law enforcement forces are made up of men and women from all races, creeds, religions, and all walks of life.

Yet they are too often second-class citizens in a sense which we sometimes ascribe to the term "minority." Though called upon continuously to defend an individual's rights against the maligning forces of society, policemen themselves are rarely offered the same defense and protection—the same civil rights—that they offer others through their duties. Often our police are the objects of intense harassment, abuse, even assault from the very people they seek to protect.

The basis for such attitudes is as complex and multifaceted as American society is today. We fear and sometimes resent the authority a policeman represents. But it is this authority that sees that our laws are obeyed and that our streets are safe. Crimes and the ills of society are caused in large part by the disregard of this authority.

Our policemen need the help of this Congress if they are to carry out their vital responsibilities effectively. Very often in the past we have affirmed constitutional rights by legislation—the 1964 Voting Rights Act being a good example.

The Law Enforcement Officers Bill of Rights, H.R. 499, of which I am a cosponsor and which I heartily support, is a good first step toward once again asserting the civil rights of our law enforcement officers which are, in fact, guaranteed to all by the Constitution and the Bill of Rights.

This legislation would guarantee police officers the same civil rights enjoyed by all other citizens, as well as set up a panel to hear the grievances of police officers who claim their civil rights have been violated. It would also deny Law Enforcement Assistance Agency funds to any community that does not conform to the provisions of this bill in its locality.

As representatives of our constituencies, we are very often aware that we do not hear from specific individuals until we do something that helps them or when we speak out in a way that is particularly appealing to them. Policemen often receive support from persons only in times of emergency, or from those who have been personally assisted by them in the past. Likewise, when we take a stand here in Congress that offends a constituent—and when one takes a stand, there is always someone on the other side—we receive mail that is loud and vocal in its dissent from our views. We rarely receive mail just telling us what a good job someone thinks we are doing.

By the same token, the vocal abuse and criticism a police officer receives when something goes wrong can be deafening, not only from the public but from his department superiors who are sensitive to public criticism. But when the streets stay safe at night, when police apprehend offenders, they are just doing their job.

I want to emphasize this—policemen are doing so much *more*. They are putting their lives on the line every time they put on their uniforms, every time they approach an individual suspected of committing a crime. Then we only hear about our officers if some spectacular arrest is made, or if, as sometimes happens, the policeman is injured or killed.

Let us support and defend our policemen by passing this important legislation. Perhaps with our demonstrated support of this special group, the public will gain a better sense of appreciation of the fine job they do.

STATEMENT OF HON. JULIA BUTLER HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. Chairman, H.R. 9035 is a measure to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a system for the redress of law enforcement officers' grievances and to establish a bill of rights for such officers in each of the several states.

Under this bill of rights, police officers of states units of local government and public agencies would receive statutory protection for certain rights already enjoyed by other citizens.

It would permit political activity by law enforcement officers when not acting in their official capacity, provide a system for investigation when an officer is threatened with disciplinary action, provide for representation on complaint review boards, permit civil suits to be brought by law enforcement officers for damages or abridgement of their civil rights, protect them against demands for financial disclosures, require notice of disciplinary action and provide for a law enforcement officers' grievance commission.

This is a measure that is long overdue to provide law enforcement officers from harassment by superiors and the public. Realizing the important role that the law enforcement agencies have in communities both large and small and the dedication of the many individuals involved in this work, I strongly urge the Members support this bill to improve the status of those engaged in this hazardous and trying occupation.

STATEMENT OF HON. MARJORIE S. HOLT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I would like to take this opportunity to express support for H.R. 4598. The passage of this bill would alter the Omnibus Crime Control and Safe Streets Act of 1968 by requiring that the States establish a Law Enforcement Officers' Bill of Rights and a Law Enforcement Officers' Grievance Commission in their comprehensive plans before such plans are approved for federal grants.

All of us have expressed outrage at the escalating rate of crime in America and have called for strong measures to combat this situation and make our streets safe for the law abiding citizen. The public opinion polls have shown us that crime is one of the major concerns of our constituents. During this same period we have observed the job of a law enforcement officer become one of the most difficult and thankless professions in the public sector. They are constantly threatened with verbal and physical abuse; their hours are long and salaries often substandard; and they have found the performance of their duties increasingly hampered by recent court decisions involving the rights of defendants.

The time has arrived to guarantee law enforcement officers the same rights which are afforded all other American citizens. This legislation would extend to these officers all of the civil rights guaranteed by the Constitution and amplified by the Supreme Court. In addition, it would provide for the establishment of Commissions which are empowered to investigate and resolve complaints and grievances arising out of infringement of rights. I fully believe that these men deserve to be able to enjoy the same rights that they safeguard for others.

I strongly urge my colleagues to support the passage of this needed bill.

STATEMENT OF HON. WILLIAM H. HUDNUT III, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. Chairman, I appreciate having this opportunity to present a statement in support of the legislation I am co-sponsoring, (H.R. 6632) to provide for the formulation of a "Law Enforcement Officers' Bill of Rights", as well as to provide for a system of redress of grievances for law officers.

This measure calls for no more than the same rights and privileges which have been included in civil rights legislation enacted over the past fifteen years. In many instances a policeman finds himself in a situation of having to enforce the law and protect the rights of others, yet he is denied these same fundamental rights. In many areas, also, citizens have complaint boards to resolve their grievances, but policemen have no similar method to air their own grievances against citizens, superior officers or government agencies. The bill I am co-sponsoring with over 100 of my colleagues would amend the Omnibus Crime Control and Safe Streets Act to provide for establishing a "Bill of Rights" for law enforcement officers with these basic provisions:

> The civil rights of a policeman shall be recognized when they are subjects of interrogation and investigation.
>
> Policemen may bring civil suits against others when they suffer violation of their civil rights arising out of the performance of their duties.
>
> A grievance Commission shall be established in each state to hear and judge policemen's complaints of infringement of their civil rights.
>
> Policemen shall have the right to engage in political activity when off duty and out of uniform.

As a former member and Acting Director of the Board of Public Safety in Indianapolis, I am well aware of the great hazards which police officers face in the performance of their duty. We should certainly provide them with a guarantee that they will receive the same protection of their rights that is granted to other citizens. This seems to me the least we can do for the dedicated group of men who risk their lives each day on our behalf. I urge the committee to take favorable action on this legislation and hope it will be enacted into law in the very near future.

STATEMENT OF HON. HAROLD T. (BIZZ) JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, it is with pleasure that I come before this Committee in support of legislation to establish a law enforcement officers' Bill of Rights. I also appear here today with a growing sense of urgency. The time has come to take action to assure that our policemen at the state and local levels are guaranteed their Constitutional rights.

I commend the Chairman and this committee for holding these hearings and bringing this issue before the Congress for full discussion. On March 30th of this year, I distributed my annual questionnaire to the constituents of the Second Congressional District of California. When asked to rank national issues, law and order was given the highest priority. Yes, Mr. Chairman, the administration of justice and the enforcement of our laws was the greatest concern of the people. We all realize that one key element in law enforcement is the law enforcement officer.

We depend greatly on our law enforcement officer, but he is beseiged with a growing number of problems. Morale continues to be a problem among our police departments. The *Miranda* decision has strengthened the rights of the accused, and in the process made additional demands of police officers. Around the country, judges such as the U.S. District Court Judge in Virginia are establishing prisoners' bill of rights as an outgrowth of recent prison outbreaks.

The situation is this. We have taken precautionary steps to guarantee the Constitutional rights of the accused and the prisoner, but we have neglected the policeman.

Let me say at this point that our courts have conscientiously preserved the rights of not only police officers but all those who come before them. What this legislation seeks to insure is the protection of law enforcement officers' rights outside the courts, particularly in administrative and grievance hearings.

With the assurance that he will receive fair and just treatment for all he undertakes, a policeman's behavior, his attitude, and his overall performance will improve. This result will be better service to his community.

My distinguished colleague. Mr. Biaggi of New York, has been in the vanguard in moving this legislation. With a long and meritorious record in the New York City police department. he is eminently qualified to speak on the problems of law enforcement officers.

The legislation which he has proposed has the support of over 100 members of the House from both sides of the aisle and from nearly every state in the union. Furthermore, it has tremendous backing among the nation's policemen and law enforcement associations.

The bill as proposed by Mr. Biaggi, would amend the Omnibus Crime Control and Safe Streets Act of 1968 by requiring that States incorporate two additional provisions in their Comprehensive Plans before receiving approval for grants. The first provision calls for a system for the receipts, investigation, and determination of complaints and grievances submitted by law enforcement officers. The other provisions provides for the formulation of a "Law Enforcement Officers' Bill of Rights" which would provide statutory protection for the Constitutional rights and privileges of all local law enforcement officers operating in the State.

A Law Enforcement Officers' Grievance Commission would be established in each state. Grievances entertained by the Commission would be only those directly related to questions of the rights denied officers because of their position in a law enforcement unit. These commissions will enable law enforcement officers to present their legitimate, civil rights related grievances to a panel composed of representatives of the public, the police, and the government (in a nonadversary situation).

We do not question the need for civilian oversight of police activities. It is, however, logical that policemen should be judged by persons having a familiarity with the work of law enforcement officers. The bill therefore requires that a proportionate number of policemen sit on grievance committees, thus insuring a fair determination in each case, and better understanding of the situation involved.

Another feature of the bill requires that the rights of an officer under investigation be spelled out. These specifications shall include the nature of the complaint and the names of the complainants; that there shall be no intimidation or threats; that the interrogations shall be recorded and of reasonable length; that the officer be advised of his rights and that he be permitted to have counsel of his choice during the interrogation.

Freedom to engage in, or refrain from, political activities when off duty is another of the important parts of the Law Enforcement Officers' Bill of Rights. This is a right widely enjoyed by the public yet denied to the law enforcement officer. This bill would alleviate that injustice.

Another item in the proposed Bill of Rights gives officers the right to bring civil suit against others for any damages or abridgement of his civil rights arising out of his official duties. The bill also provides that an officer shall be given assistance when requested to bring such suits by his superiors.

Officers' personal finances shall remain private unless a question of conflict-of-interest or tax payments arises. This provision grants the policeman the privacy afforded the general public.

Finally the Bill of Rights provides that an officer shall be notified and given reasons for any personnel actions considered to be punitive prior to the effective date of any such action.

This bill may seem to guarantee rights which everyone already enjoys. This is not true. There are police departments throughout the nation where the individual officer does not enjoy the rights which the man on the street takes for granted. The lawman is a second class citizen with second class rights.

To correct this anomaly, I support this measure which would guarantee these rights to all police departments before the state could receive Federal funds through the Law Enforcement Assistance Administration. This is an effort to upgrade law enforcement activities through greater assurances of Constitutional guarantees to our law enforcement officers. I hope the Committee will agree with the wisdom of this measure and report it for consideration by the House.

STATEMENT BY HON. WILLIAM LEHMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, law enforcement officers are vitally needed members of society. As such, they should enjoy, as should every other citizen, the full protection of their civil rights.

H.R. 4598 is designed to provide this protection. It calls for a formal grievance commission with police, government and public representation to be established by state and local governments. It specifies the rights of officers under investigation. It allows policemen to bring civil suit for either damages or violations of civil rights arising out of their official duties. It protects the right of law enforcement officers to either engage in or refuse to engage in political activity while off duty.

The intent of this legislation is to guarantee that those who devote their lives to upholding our laws will receive fair treatment under those laws.

As we work to protect the rights of our citizens, let us not forget the men and women who daily risk their lives to defend those rights.

STATEMENT OF HON. MIKE MCCORMACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON, IN SUPPORT OF H.R. 1531, THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS AND H.R. 8025, THE PUBLIC SAFETY OFFICERS BENEFITS ACT OF 1973

Mr. Chairman, it is an honor and a privilege to have this opportunity to present testimony in support of two bills I have co-sponsored to amend the Omnibus Crime Control and Safe Streets Act of 1968:

> H.R. 1531, to provide a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights, and.
>
> H.R. 8025, to provide benefits to survivors of certain public safety officers who die in the performance of duty.

We are all too well aware that ensuring public safety is one of the most critical tests and hard sought goals of a civilized society. The individuals who perform that function in any society, but particularly in our own, not only provide us a service of incalculable benefit, but also perform their multiple duties under hazardous and oftentimes emotionally trying conditions.

Unfortunately, in recent years, the inherent difficulties of the job of a policeman have been further complicated by the rising threat of injury or fatality on the job and an adversarial relationship with segments of the community. In combination with court decisions that have tended to emphasize the rights of defendents in criminal cases, this has produced a morale crisis among police officers. This is a doubly tragic situation because policemen not only deserve our respect for a job well done, but also require high morale and respect to continue to do the job well. Thus, it is most unfortunate that some bad publicity has undeservedly affected the reputation and respect of the many effective and judicious law enforcement officers in this country.

There is much we can do to ameliorate and eventually reverse this situation. In the Congress, we can continue to expand and improve legislation to assist state and local governments in their crime control and prevention programs. Moreover, we can seek new and imaginative ways to enhance the work of the policeman in this country.

In my judgment, H.R. 1531, which was conceived by Congressman Biaggi, himself a former law enforcement officer, goes a long way toward the goal of more imaginative approaches to improved law enforcement. By setting forth specific requirements for a law enforcement officer's bill of rights and establishing a system for the redress of law enforcement officers' grievances, it is designed to improve the morale of officers and diminish their isolation from their communities by affirming the rights due them as citizens of this country. For example, this legislation would ensure that policemen are not treated as second class citizens through assuring them that any investigation is conducted at a reasonable hour, and that time is afforded for rest, meals and necessary outside contact. In addition, an officer being interrogated must be informed who will question him and the nature of the charges against him.

Certainly, these are reasonable requirements. We expect such guarantees for ourselves and cannot but feel the same determination that they be provided others.

Policemen would be specifically permitted, but specifically not required, to participate in political activity. Individual police complaints or complaints by police employee organizations of infringement of rights could be heard before the grievance commission. Police would also serve on citizen complaint review boards in order that their case and concerns could be represented in the most understandable fashion.

At this point, I would like to direct my remarks to H.R. 8025, which is nearly identical to H.R. 12, the Public Safety Officers' Benefits Act. I very much support the bill in general and am hopeful that such legislation can become law this year. I do feel that it is important that one change be made in that bill, however, which is why I introduced H.R. 8025 with the specific wording that reserve law enforcement officers be covered by this excellent program.

That Reserve Law Enforcement Officers were not specifically included under the legislation passed by the House last year was brought to my attention by participants in and supporting citizens of the Grant County reserve force which is in the Fourth district of Washington State which I represent. I would like to use the information they provided me in my testimony in support of including reserve law enforcement officers under this legislation.

Under the guidance of Sheriff Ralph Hall, a Sheriff's Reserve force was organized in March of 1972 with 14 citizens. Many have been added to the reserve force since that time. They perform every assigned task, in most cases without pay or other reward, as the regular full time officers. To be allowed to participate in this program, 90 hours of training and courses were undertaken in addition to a minimum of 30 hours of on-the-job training. After this, during the last six months of 1972, these men put in thousands of man hours. When performing patrol duty, radio and jail relief, and related functions, these men were not compensated for their services. And about half of the hourly wages they did receive from special work at public dances and fairs has gone toward the purchase of a patrol car, basic uniforms, etc.

That there are men and women in this country who are willing to give of their time for the public interest is one of the many things which makes America the great country it is today. Particularly when budgetary pressures in all areas mean that needed service cannot be given, we are fortunate indeed that public safety needs can be filled through volunteer assistance.

There are countless cities and counties across America which benefit from similar reserve forces.

There is little we can specifically do to express our gratitude to these generous men. The very least, it seems to me, would be to ensure that if these men are killed in the performance of duty as a result of a criminal act or an apparent criminal act, that their survivors receive the same federal compensation afforded to regular public safety officers' survivors under the same circumstances.

I respectfully request that the final legislation reported from this committee accord the survivors of reserve officers those same rights by specifically covering reserve officers under this legislation.

STATEMENT OF HON. ROBERT McCLORY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I am grateful for the opportunity to submit to your committee this statement concerning the need to provide benefits to survivors of certain public safety officers who die in the performance of their duties.

Being the principal sponsor of H.R. 6449, a measure similar to H.R. 12, I am vitally concerned with the concept of providing compensation to the widows and dependents of public safety officers killed in the line of duty as the direct and proximate result of a criminal act.

Legislation to make such provision is urgently needed because of the growing risk of death that public safety officers, including firemen, face while carrying out their duties, and because of existing disparities of survivor's benefits. Death and disability benefits are presently inadequate and are at best difficult to administer, due to immense variations from city to city and state to state in compensation rates, requirements, and procedures.

Statistics from the FBI "Uniform Crime Reports" clearly demonstrate the increasing incidence of violent street crime. According to these figures, the rate of violent street crime increased by 156 percent during the decade of the 1960's. In addition, Mr. Chairman, in recent years a significant number of deaths resulted from the actions of violent dissenters who have chosen public safety officers as targets for demonstrating their dissatisfaction with society.

In spite of the severe occupational hazards which confront policemen, firemen, correctional officers, and other public safety officials, many states have failed to provide sufficient death benefits for the survivors. For example, a study conducted in October 1970 reported that 18 states provided no such financial assistance; further, even where states have provided death benefits, they are generally inadequate.

For these reasons, Messrs. Smith, Sandman, Railsback, Fish, Hogan, and Moorhead, the cosponsors of H.R. 6449, have joined me in providing in this bill a minimum federal payment of $50,000 to meet the immediate financial needs of survivors of public safety officers who give their lives in the line of duty.

Mr. Chairman, in our bill, "public safety officer" is defined to include persons serving public agencies, with or without compensation, in activities pertaining to law enforcement, corrections, courts with criminal or juvenile delinquent jurisdiction, and firefighting. This gratuity would serve as a basis for survivor's benefits and with certain exceptions, would be in addition to any other benefits due the survivors. Benefits paid under this proposal would not be subject to federal income taxation.

It is estimated that the cost of this legislation would be $9.4 million annually, based upon recently-published statistics on assaults against public safety officers. This cost would yearly consist of approximately $8.3 million in awards and $1.1 million in administrative expenses.

Mr. Chairman, the establishment of a federal benefits program such as that proposed in H.R. 6449 would do much in raising the death benefits of public safety officials to a level befitting the services that these courageous men and women are called upon to perform. I sincerely hope that this legislation will be approved by this committee and will eventually result in a Public Safety Officers' Benefits Act.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 20, 1973.

HON. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law, Rayburn Building, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to address this Committee not only as a member of this Congress, but as a former police officer. I worked as an on-duty police officer for the city of Irving, Texas, in my District for a number of years and feel I have an in-depth understanding of the problems and frustrations of the American police officer.

I would hope that this very considerate body would give H.R. 4600 "The Policeman's Bill of Rights" every just consideration and find it worthy of favorable report. Our police officer needs to be sure that he will be afforded the rights of every other American citizen when accused of a crime or infraction of regulations. As it stands now, he has fewer rights as an individual accused than does the convicted criminal he has perhaps recently arrested. Mr. Chairman, this is an urgently needed concept and merits this Committee's favorable consideration.

I thank you for your time and interest in this very important matter.

Sincerely yours,

DALE MILFORD,
Member of Congress.

STATEMENT OF HON. ROBERT H. MOLLOHAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

A Law Enforcement Officers Bill of Rights is legislation that has long been needed to reaffirm and ensure the Constitutional freedoms of our public servants who risk their lives daily to protect our country and communities.

Without such legislation, law enforcement officials can and often do find themselves in the untenable position of having little recourse to counter civil or criminal actions that may be brought against them as a result of their having performed their duties as public servants and enforcers of Federal, state and local laws.

I wholeheartedly support provisions in the proposed Law Enforcement Officers Bill of Rights that spell out the rights of every officer. It is only fair and just that officers of the law have the right to a full, complete and impartial hearing anytime charges are brought against them. In addition, they should have the privilege of being represented by counsel of their own choosing during such proceedings.

Furthermore, I endorse provisions of the legislation that would permit officers to bring civil suit against those persons or groups who may have physically harmed or abridged the civil rights of a law enforcement officer. This is a most basic right that certainly cannot in good conscience be denied a law enforcement officer, particularly in such instances where violations of his civil rights occur during the performance of official duties.

I also believe that the establishment of a Law Enforcement Officers Grievance Commission at the state or local level, as proposed in the legislation under consideration, would be a positive step in making certain that law enforcement officers are afforded the most basic right of ensuring that any violations of their civil rights are fully investigated and that such rights are protected when violations are proved.

It is my hope that the Members of the Committee will examine this proposed legislation carefully and that they will act favorably on it. To do otherwise, in my opinion, would be to deny our dedicated law enforcement personnel the most basic Constitutional rights that apply to all other citizens, regardless of their occupation.

STATEMENT OF HON. LUCIEN N. NEDZI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I appreciate this opportunity to offer my strong support of H.R. 9035, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968, I am pleased to be a co-sponsor of this legislation, which would establish a law enforcement officers' "Bill of Rights."

It is ironic that in protecting the rights of others the policeman is sometimes denied those very rights. This bill spells out his entitlement to equal protection under the law.

Specifically, H.R. 9035 will permit police officers to engage in off-duty political activities, insure their rights while under administrative investigation, provide for representation on complaint review boards, and establish State and local commissions charged with the impartial airing of policemen's grievances.

The heavy responsibility placed upon the shoulders of our law enforcement officials puts them in a position of high visibility i nthe eyes of their fellow citizens.

Few will disagree that in recent years, the policeman has been subjected to a growing number of abuses encountered in the line of duty. Particularly in our cities the policeman is the most obvious representative of authority in a sometimes hostile community, and he must bear the brunt of that hostility.

Court decisions have further complicated the law officer's duties. The policeman's job is one of the most complicated and hazardous existing today.

For these reasons, the policeman deserves better than his present treatment under the law. Without a doubt, our police must be held accountable for their actions, but too often a policeman is not given the same opportunities to defend himself that other citizens have. This legislation will not give the policeman a favored position with respect to the law. Rather, it will merely entitle him to the same rights and procedural channels now enjoyed by all Americans.

In the next two years, we will spend $2 billion for law enforcement. It is consistent with this enlarged expenditure to enact clarifying and corrective legislation on policemen's rights.

Mr. Chairman, I respectfully urge your favorable action upon this proposed legislation.

STATEMENT OF HON. WRIGHT PATMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, let me thank this Committee for the opportunity to express my strong support for the Policemen's Bill of Rights which I have co-sponsored along with Representative Biaggi.

As a former District Attorney, I have a special appreciation for law enforcement officers and for the essential role they play in preserving order within our society—order that is fundamental to progress and to existence itself. No other public employees must endure the vicious physical and verbal abuse which is the lot of the policeman. In 1972, a total of 112 local, county and state law enforcement officers were killed in the line of duty and many times that number were injured, but despite the terrible hazards they face each day and the vital importance of their work, police officers are too often treated as second-class citizens. His is an intolerable situation, and I firmly believe that passage of the Policemen's Bill of Rights is needed to protect the rights of police officers, to insure that they are properly represented on complaint review boards, and to give them the same rights that other citizens have to bring civil suit for abridgements of their rights.

Mr. Chairman, I sincerely feel that we owe law enforcement officers our best efforts to insure that the hazardous job of protecting others does not require that they forfeit their own rights as citizens.

On a more practical basis, it is in our own interest to see that law officers are accorded their full rights since we need to recruit and retain the best qualified men and women possible in our police organizations at all levels of government. In no other field of human activity is it so important that we have bright and stable people. Indeed, the ability of a police officer often makes the difference between life and death, not only for himself but for other citizens. The policemen's Bill of Rights and other measures to improve the lot of law enforcement officers, therefore, will benefit the country for years to come.

Mr. Chairman, police officers have been called the most abused minority group in America and I hope that this Committee will give thorough and sympathetic consideration to this sound and much needed legislation that would help correct many of the inequities which have so long confronted and confounded law enforcement officers.

Thank you.

STATEMENT OF HON. PETER A. PEYSER, A REPRESENTATIVE IN CONGRESS FROM THE require police officer representation on Police Complaint Review Boards:

Mr. Chairman, I am pleased to be able to testify in behalf of the Law Enforcement Officers Bill of Rights. This is legislation which I have vigorously supported since coming to Congress. I have introduced H.R. 1834 in this session to establish a law enforcement officers' bill of rights in each of the several states.

The need for this legislation is manifest. Today, the law enforcement officer is required to be more conscious of the rights of a criminal suspect than ever before in history. He is ever aware that his actions must be in accordance with the rights of the accused, or there will be no conviction possible, despite the criminal conduct of the suspect. It is an enormous responsibility, which is carried out daily in every city in this country with commendable success.

It is ironic and most distressing that the policeman, who is charged with protecting the rights of those who are accused of violating the law, is denied the basic rights guaranteed to all citizens by the Constitution. This dichotomy can only be corrected by the swift passage of the Law Enforcement Officers Bill of Rights. The legislation will afford the Law Enforcement Officer with the basic civil rights which he desires and which he deserves.

The key provisions of this legislation would:

allow a police officer to engage in political activity when off duty and out of uniform;

require specific conditions adhered to when an officer is being investigated or interrogated;

establish a commission to hear the grievances arising out of claimed infringements of the civil rights of police officers;

require police officer representation on Police Complaint Review Boards;

grant the police officers the right to bring civil suits against persons or groups for damages suffered or for abridgement of their civil rights while in performance of their duties;

limit the inspection of personal papers and private activities of police officers to legally established groups, such as the Internal Revenue Service;

prohibit the taking of adverse administrative action against a policeman without proper respect for the rights outlined in this bill;

prohibit punitive action against a police officer unless he has been notified of the action and the reasons for such action;

prohibit the taking of any adverse action against a police officer who exercised his civil rights as listed in this legislation;

extend to a police officer the right to bring civil suit against a person or persons for redress of grievances.

These enumerated rights will go a long way to alleviating the frustration which so many of our policemen experience today. They see the contradiction between enforcing the law and yet being denied the benefits of the law. In my opinion, this contradiction should be ended immediately by the passage of this legislation.

STATEMENT OF HON. MELVIN PRICE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, as a sponsor of the Law Enforcement Officers' Bill of Rights legislation, I would like to assure your Committee of my unfailing support for this bill.

The nation's police officers are not above the law, but neither should they be beneath it. The restrictions often imposed upon the private and even public lives of our police officers appear unconscionable in today's society. The legislative proposals before the Committee would establish a "bill of rights" which would permit policemen to enjoy the same rights accorded other American citizens and provide a framework wherein an officer would seek redress of grievances without fear of retaliation by his superiors.

The details of the legislation are known to the Committee, and no purpose would be served by my reference to specific aspects which are comprehensively discussed in the testimony of my colleagues. I would just like to emphasize my support for the right of the nation's policemen to dispel the stigma of second class citizenship and urge the Committee to give favorable consideration to the legislation in question.

STATEMENT OF HON. MATTHEW J. RINALDO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I am pleased to have the opportunity to appear before this Committee today and state my strong support for the two extremely important pieces of legislation under consideration here—H.R. 163, which has come to be known as The Policemen's Bill of Rights, and H.R. 12, The Public Safety Officers' Benefits Act. As a co-sponsor of each of these bills, it is my fervent hope that the Committee will act favorably on this legislation.

A policeman's bill of rights—there is extreme irony in the necessity for such a proposal. And yet there is a great need for the enactment of this legislation. We think of the policeman as the standard bearer of the law, and indeed, this is a proper conception. It seems to follow without question that he enjoys the full protection of the law and has at his command perhaps even special access to the procedures entailed in due process. Close examination reveals, however, that this proximity to the processes of justice does not insure the law enforcement officer even the basic civil rights that other citizens enjoy.

Actions by the courts and intimidation on the job are quickly eroding the civil rights of policemen. If an officer of the law cannot depend upon the courts to uphold his civil rights, if he cannot bring action—however, justified he may be—against a superior for fear of losing his job, then the policeman is no longer able to enjoy the Constitutional guarantee of his civil rights. He is denied the full privileges of American citizenship.

H.R. 163 would require that a system be provided for the investigation and determination of complaints and grievances submitted by law enforcement officers of the States, units of general local government, and public agencies.

Additionally, it would provide for the formulation of a Law Enforcement Officers Bill of Rights which, if enacted into law, would provide statutory protection for the constitutional rights and privileges of all law enforcement officers within a State.

Among other things, the Bill of Rights would prohibit bans on law enforcement officers engaging in political activity.

The Bill of Rights would also specify the rights of law enforcement officers under investigation, such as the time and place of investigation; the nature of the complaint and names of complaints. It would also require that complaints be sworn. It would limit interrogations of the policemen to reasonable duration and ban intimidation or threats. It would mandate the recording of interrogations. The officers would have to be informed of all legal rights. Finally, police officers would have the right to representation by counsel or another representative of their choosing during the interrogation.

These are the main features of this proposal that I regard as so important to the peace of mind and security of law enforcement officers of this nation.

We rely upon our brave law enforcement officers to prevent crime, to apprehend law breakers, to literally risk their lives for our protection every moment of their working day. We look to policemen in every hour of impending danger and for aid in every disaster. And they come through for us and for our system. Suffice it to say that we must see to it that the system comes through for them. I wholeheartedly endorse H.R. 163 and the Policeman's Bill of Rights and urge the Committee to pass this legislation promptly.

Also under consideration today is H.R. 12 to provide benefits to survivors of certain public safety officers who die in the performance of duty.

One has only to spend a few moments, as I have many times, with the family of a policeman who has been killed in the performance of duty to know that there can be no adequate compensation for the supreme sacrifice. Yet, these brave families must go on.

H.R. 12 would amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide that the dependents of an eligible public safety officer who has died as a result of injury sustained in the performance of duty shall be paid a gratuity of $50,000. This would apply to a spouse and one or more dependent children, or the dependent parents of the policeman. This legislation offers financial assistance at a time when it is so desperately needed, and I trust my colleagues will recognize the necessity of its enactment.

In conclusion, let me state briefly that if we are to continue to attract into our law enforcement systems the kind of policemen I have had the privilege to know—individuals of great courage, devotion and integrity—then we are going to have to offer them some degree of security in knowing that should they lose their lives in the course of duty, their families will receive adequate financial aid. And, certainly, we are going to have to guarantee them the dignity and protection of first-class citizenship. This, Mr. Chairman, is a minimum program.

STATEMENT BY HON. ROBERT A. ROE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

I, Robert A. Roe, Member of the House of Representatives, Eighth District of the State of New Jersey, am privileged and honored to have the opportunity to submit this statement of need to support of legislation (my bill No. H.R. 4598) which I have cosponsored with Mr. Biaggi and several other of my colleagues.

Today's law enforcement officer has one of the toughest jobs in our society. Everyday he is expected to function as a psychiatrist, medical aide, legal aide, law enforcer, crowd controller, corrections officer, and nursemaid to name only some of his duties. He must perform these functions while displaying the utmost respect for the human and civil rights of the persons with whom he comes in contact while acting as patient as a saint and as just as Solomon.

However, while he (or she) performs his duties, he will undoubtedly have gripes and grievances about how he is treated by the public and by his superiors. While the legal rights of the public with whom he comes in contact have been spelled out in the law, his rights as a public safety officer are not as clear cut. In my opinion, Mr. Chairman, it is high time that those rights were better defined. As Patrick V. Murphy former New York City Police Commissioner and current head of the Police Foundation said recently, morale among law enforcement officers is at an all time low. Mr. Chairman, I feel that H.R. 4598 (the Biaggi Bill) also known as the Law Enforcement Officer's Bill of Rights which I have cosponsored will help remedy this serious morale problem.

This bill clearly states the rights of law enforcement officers in several areas. First of all it guarantees the rights of the law enforcement officer to participate as any other citizen in any political activity which his political beliefs dictate when he is off duty. In addition, the bill guarantees the right to refrain from any political participation he does not wish to participate in. These guarantees are meant to insulate the law enforcement officer from economic or assignment retaliation by a local or state official because the officer espouses a particular political party, candidate or philosophy.

Since today's law enforcement officer has a strict code of behavior he is expected to follow, interrogation into the actions of particular officers by police departments, commissioners and even civilian review boards have become quite common. The United States Supreme Court has gone to great lengths to explain the rights and detail procedures regarding citizens who are suspected of a crime or interrogated for any reason. However nowhere, Mr. Chairman, have they spelled out the rights of a law enforcement officer under investigation for violating departmental regulations or policy while on or off duty.

This bill will guarantee the officer certain basic rights already guaranteed to other citizens under investigation for any purpose. These rights include the right to know the complaint against the officer and who made it, interrogations of reasonable duration, the right to have counsel present if desired, the recording of all interrogations, and the right not to be intimidated by threats to his job or against his person.

Mr. Chairman, this bill would also provide that where a civilian review board of police action is provided, that the law enforcement officer be guaranteed that a proportionate number of members of this board be made up of police representatives. This provision would in my opinion, Mr. Chairman, guarantee the law enforcement officer a hearing before a board made up at least partially of his peers and hopefully would convince the officer that he will be given a fair hearing.

Another basic right that this bill intends to guarantee to law enforcement officers is the right to know why they have been given an assignment that could be considered punitive. This of course is a safeguard provision so that if there is a reason stemming from the action of the officer for the assignment he will know what it is and may then take any action he considers appropriate.

Finally, Mr. Chairman, this bill provides for a mechanism through which the law enforcement officer can voice his complaint or grievance. A grievance board made up of representatives of government, police, and the general public with the duty to receive, investigate, and to determine complaints would be established. The commission would be organized on a state and local basis and would have the power to hold hearings, take testimony, and issue cease and desist orders, when presented a grievance by a law enforcement officer regarding his rights. As a backup "muscle" provision, Mr. Chairman, the bill provides in addition the right of the law enforcement officer to sue in court civilly to vindicate any violations of his rights and for any damages suffered because of such a violation.

Mr. Chairman, I feel that our men in blue need to know that they too have rights which must be recognized. This bill combined with legislation to guarantee the security of their families in case of their death or disability which I introduced (H.R. 3853 and H.R. 4061) and which have been referred to this committee, will go a long way towards improving the morale and motivation of our police officers. Thus I strongly urge you to give this bill your strongest support and approval.

STATEMENT OF HON. SAMUEL S. STRATTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I appreciate the opportunity to present my views in behalf of two bills I have joined in sponsoring: H.R. 1209, to establish a bill of rights for law enforcement officers, and H.R. 1210 to provide special death benefits to survivors of certain public safety and law enforcement officials.

Almost daily our newspapers tell of the dangers faced by our law enforcement officials, as they risk death to protect the citizenry. These dangers have multiplied as our society has become increasingly violent, as indicated by the fact that the number of law enforcement officers killed by criminal action has quadrupled in the last ten years. Two years ago, in the space of just one week, two police officers in Albany, New York, in my congressional district, were killed in separate incidents—both in the line of duty. My bills are designed to demonstrate to these brave men and women in the law enforcement and public safety professions that their Federal government and the American people that we are aware of the sacrifices they are making for us and that we are grateful for the services they render to their fellow citizens.

The first bill which I have joined in sponsoring, H.R. 1210, amends Title I of the Omnibus Crime Control and Safe Streets Act to provide for a "Law Enforcement Officers' Grievance System and Bill of Rights." This legislation is basically designed to provide state and local enforcement agencies with a statutory protection for certain rights enjoyed by other citizens. The least we can do for those who spend their lives protecting our rights is to assure them of their rights.

The other bill, H.R. 1209, would provide a $50,000 benefit to families of certain public officials who are killed in the line of duty. The benefits would apply to families of all law enforcement officers, and all public officials with duties that involve them in the administration of justice.

I urge this committee to act favorably on both of these important pieces of legislation.

STATEMENT OF HON. DAVID G. TOWELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

I wish to express my support for H.R. 9035, a bill which I co-sponsored and one being considered during these hearings. This legislation would prompt communities across the nation to create bills of rights for police officers and set up grievance committees to handle their complaints.

Because of the many police shows on television, we are all aware that criminal suspects all have certain rights.

I believe that it is time to spell out the rights of the men and women who enforce the law, and provide a system for them to seek redress.

I'm sure that this legislation can be a major force in bringing the rights of the criminal and the police into a more proper balance.

STATEMENT BY HON. LESTER L. WOLFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I greatly appreciate having the opportunity to submit testimony on behalf of a Policemen's Bill of Rights, and I commend the interest which your Committee has shown in this matter.

As an original sponsor of Congressman Mario Biaggi's legislation to create a Policemen's Bill of Rights and to provide a system of redress of law enforcement officers' grievances, I believe it is imperative that we take the action necessary to insure every police officer in this country the civil rights guaranteed to him under our Constitution. I find it personally very disturbing that in many areas of the Nation, law enforcement officers, if arrested and charged with a crime, are denied their citizen's right to immediate legal counsel and may be detained in jail for a period of time. It is also distressing, and patently unfair, that police officers are presently prohibited from participating in any political activity, a right guaranteed to all citizens.

The Policemen's Bill of Rights, as set forth in our legislation, would provide that law enforcement officers shall not be prohibited from engaging in political activity while off duty. It would also guarantee to police officers under investigation their right to immediate legal counsel. The intent of the Bill of Rights is to provide statutory protection for the Constitutional rights and privileges of all state and local law enforcement officers, as is presently guaranteed to every other citizen in this country. In addition, our bill would establish a system of redress for law enforcement officers who submit grievances or complaints by setting up in each state or unit of general local government a law enforcement officers grievance commission, comprised of a tripartite representation of police, government and the public. The commission would have the authority to investigate complaints submitted by police officers arising out of claimed infringement of rights, and to take the action necessary to insure redress of these grievances when such action is justified.

It is obvious that many policemen in our country feel they have become second-class citizens by the very fact that they are denied many of the rights and privileges guaranteed to all other citizens. It is the intent of our bill to raise police officers to the status of first-class citizenry to which they are entitled. Just recently, I received a letter from the President of the International Conference of Police Associations in which he stated that "Policemen throughout the country need legislation of this type to elevate themselves to the position of first class citizens." Certainly, the discrimination which police officers rightly feel, and their ensuing low state of morale, should be a matter of serious concern to all of us. Police officers in this country face a continually difficult task: they need and deserve our support. I believe that the very least we in the Congress can do is to assure them that they are entitled to the same rights and considerations as the rest of society.

Last year as well as this session, Congressman Biaggi's Policemen's Bill of Rights received the support of more than 100 Members of the House and the endorsement of a host of law enforcement organizations. The nature and extent of this support indicates a general and growing feeling that it is high time that the rights of our law enforcement officers be recognized and that the injustices which they have experienced be eliminated.

Thank you again for the opportunity to submit a statement on behalf of this proposal. I look forward to the outcome of the Subcommittee's deliberations.

STATEMENT OF HON. JIM WRIGHT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman. I am happy to have this opportunity to make the following observations in support of the proposed legislation you are now considering to provide for a system for the redress of law enforcement officers' grievances and to establish a law enforcement officers' bill of rights in each of the several states.

As you know. I am a co-sponsor of one bill which would accomplish this purpose, and I will give my wholehearted support to any measure which may be reported out that will effectively achieve this end.

It is my firm conviction, based on personal observation and acquaintance with a number of very fine law enforcement officers, that they are individuals who, although much maligned by some harsh and irresponsible critics, form the bulwark of our peaceful social order.

By our collective faith in them, we walk the streets without fear and sleep securely at night. It is their mission to brave personal danger for society's protection.

Often we ask of them too much. Usually we pay them too little. City budgets sometimes skimp on their salaries. Their ranks are thin when we can't recruit enough of the men we need for these absolutely vital tasks. But law enforcement officers, often harassed and usually underpaid, do not go out on strike and leave our cities defenseless.

Society owes them something in return. We owe them our understanding. We owe them our cooperation. And we owe to them society's protection while they are protecting all of us.

Six years ago I wrote an amendment to the Civil Rights Act and succeeded in passing it. My amendment makes it a Federal offense to assault or injure or physically interfere with a policeman or fireman carrying out his duties during a riot or violent civil disturbance.

The legislation which you are now considering is but a logical extension of the same philosophy which motivated my amendment to the Civil Rights Act. Your measure would guarantee in public law the rights of those who contribute so much and receive so little in return.

It would help safeguard the law enforcement officer from the threat of intimidation. and from the "kangaroo court" atmosphere which has been known to exist in some investigations relating to dereliction of duty. It would prevent an officer's legitimate grievance from being brushed aside as an inconsequential matter not worthy of consideration.

This legislation is not intended in any way to protect the corrupt or trigger-happy from prosecution, or to provide immunity from disciplinary action for those who have been lax in performance of their duties.

The legislation would merely bolster the guarantee that really exists already under our Constitution—a law enforcement officer's rights as a free citizen of the United States. It is unfortunate but nevertheless true that, because of his special status in our society, an officer needs the codification into law of procedures under which his rights will be protected.

Therefore, Mr. Chairman, I respectfully urge that this committee issue a favorable report recommending passage of legislation giving a "bill of rights" to our law enforcement officers. Thank you.

NATIONAL UNION OF POLICE OFFICERS, AFL–CIO.
Washington, D.C., July 25, 1973.

Congressman JOSHUA EILBERG,
U.S. Congress, Washington, D.C.

DEAR CONGRESSMAN EILBERG: As President of the National Union of Police Officers, AFL–CIO, I wish to place our union on record as urging the passage of H.R. 4598 introduced by Representative Mario Biaggi (D–NY).

This Bill—and a number of variations of it—has been introduced and reintroduced in the House of Representatives. Now that hearings are scheduled on it, we wish to make our position clear.

H.R. 4598, in our opinion, deserves the most serious consideration of the Congress because it can right a wrong of long standing that exists in the procedures covering the interrogation and trial of police officers accused of a crime.

Popularly known as "The Bill of Rights" for police officers, H.R. 4598 would rule that any law enforcement officer accused of an offense is entitled to an attorney and is similarly entitled to all the other rights and privileges as those accorded to any other private citizen in the same situation.

To NUPO, this concept seems eminently just and fair.

Under the American system of jurisprudence—as fine a system as any in the world—every private citizen accused of a crime has the right to legal counsel. If a person cannot afford legal counsel, the Court, in its desire to practice justice as it should be practiced—appoints an attorney to handle the defense of the accused. This is standard operating procedure everywhere.

It's as fair a procedure as has yet been devised and it applies to everyone—except the police.

Why they have been exempted from this coverage is a long story of departmental procedures almost military in structure (though even an army man is entitled to a defense attorney) that goes back over a century. But—as of this moment in time, law enforcement officers are still outside the pale.

If they are accused of a crime, they are not entitled to their own attorney; they cannot have one present at interrogation sessions to advise them of their rights under the law nor to help guide them in their proper self defense. They are interrogated by their superior officers and are strictly on their own.

Ironically, these same police officers—when they apprehend a criminal—must advise that criminal of his rights; must tell him he is entitled to counsel and that if he cannot afford it, counsel will be appointed for him. Yet here they sit now—stripped of the very rights they are duty-bound to proclaim to the persons they apprehend. What this does to moral is perhaps best left unsaid.

At issue, as NUPO sees it, is the basic principle that every person—regardless of his occupation—should have the same rights and privileges under the law. Any other formula is a mockery of the law.

We ask you to consider that if a criminal is given all of these rights, why should a police officer be given anything less?

Where is the justice behind such a patently discriminatory procedure? And why should this injustice be allowed to continue?

What have police officers done that the judicial system should accord them this type of treatment?

Why should they be given so much less consideration than the persons they apprehend and help to bring to justice?

We can assure you that police officers throughout America feel very strongly that these inequities should be eliminated. They feel there is something very wrong in a system where the very laws they are dedicated to uphold exclude them from the protection they mandate for everybody else. They see no reason in logic or equity why such practices should be continued.

In brief—the police want no more privileges than anybody else, but they certainly have every right to expect no less.

Representative Biaggi's proposed Bill can change all that. It can rectify a wrong that needs rectification if a decent level of morale is to be maintained in the police forces of the nation.

For these reasons we respectfully urge the passage of the "Bill of Rights" for Police Officers. It will clean the slate once and for all and give every person in America the same rights and privileges under the law.

Respectfully,

JOHN J. CASSESE,
President.

NATIONAL UNION OF POLICE OFFICERS, AFL–CIO,
Washington, D.C., July 30, 1973.

Congressman JOSHUA EILBERG,
Chairman, House Subcommittee on Immigration, Citizenship and International Law, U.S. Congress, Washington, D.C.

DEAR CONGRESSMAN EILBERG: At the hearing before your Subcommittee on July 25, 1973, regarding a Bill introduced by Representative Peter W. Radino, Jr., I submitted a statement setting forth the position of the National Union of Police Officers, AFL–CIO in support of the Bill. A copy of the statement is attached.

At the hearing, a number of committee members repeatedly asked several questions regarding the Bill. We would like to state our position with regard to those questions:

1. Would such a bill increase the recruiting of policemen? The answer is "yes". However, it is difficult to say to what degree. When an applicant decides to become a policeman, you can rest assured that he looks at all aspects of the job (i.e. salary, working conditions, fringe benefits, etc.) Years ago, a young recruit wasn't concerned with death benefits because he was young and healthy, and death was the furthest thing from his mind. However, today, the policemen's job is much more dangerous what with ambushes, snipers, etc. Thus, a meaningful death benefit would make a substantial difference in recruiting a potential policeman.

2. Death Penalty—NUPO maintains that the death penalty is a deterrent—that a would-be killer would think twice before pulling the trigger if he knew his own life was at stake. It's more than coincidental that more and more policemen have been killed since the staying of executions and the recent Supreme Court Decision.

3. Should it be "line of duty" or just for "violent crimes"? NUPO's position is that it should be for "line of duty". A policeman's job is categorized as dangerous and hazardous. Death in any manner while performing his duty makes a policeman no less dead. Since most policemen who are killed while performing their duties die because of a violent crime, the broader phrase "line of duty" should be adopted.

4. Who should be included in the Bill? NUPO's position is police, firefighters and volunteer members of either group. It is the police and firefighters who are in constant danger while carrying out their duties.

5. Should any monetary awards given on the local scene be subtracted from the $50,000? We say "NO"! First of all, the vast majority of the 40,000 communities in the United States give no monetary award to widows and survivors. Those that do, do not give much, except perhaps the few larger cities such as New York. When one considers the amount of money spent on the defense of a cop killer, it is only fair and just to give these police widows the $50,000 award without deduction.

6. Should the award be paid in lump sum? Our position, which would be fair to all, is to leave the option to the widow. If she needs the money for any reason, she'll take the lump sum, or since the widow now has no breadwinner, she will probably take it in monthly installments. The decision should be hers.

Respectfully,

JOHN J. CASSESE, *President.*

Enclosure.

STATEMENT OF JOHN J. HARRINGTON, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE GRAND LODGE, ON H.R. 12, S. 15, H.R. 6449, JULY 25, 1973

FRATERNAL ORDER OF POLICE

NATIONAL HEADQUARTERS, TUCSON, ARIZ.

Mr. Chairman and members of the Judiciary Committee. My name is John J. Harrington. I am the national president of the Fraternal Order of Police. The Fraternal Order of Police is the oldest and the largest police organization of full time law enforcement officers in the U.S.A.

We were organized in May 1915, and have a membership of over 130,000 policemen. To join the Fraternal Order of Police, as an active member you must be a full time police officer of the Federal Government; a State government; or a local municipality. It is in their behalf that I come before you today, to give to you their views on the legislative bills pending before you.

This type of legislation has been before Congress for the past two years. The reason why this type of legislation has been brought before you, was because there has been such an increase, in the killing of policemen for no matter whatsoever, other than the fact that, the person killed was a policeman. The killer called him "a pig". In this world of today's permissiveness, this made the killer a big man, "a cop killer". The killer knew if he got caught, the worse he would have done to him was to be sentenced to life in prison. This only averages a period of 2 years and 8 months.

This type of killer, kills and kills again. He knows if he can escape, and has to kill to stay free, nothing will happen to him other than to be given a second life sentence. Yet it is a policeman who must face this type of person. It was two cop killers that killed the warden and deputy warden in the Philadelphia prison.

just a short time ago. William Hollewell the man who killed two policemen, served two life sentences. He was pardoned thru the efforts of his foster mother. This man is back in prison again. He murdered his foster mother for her money.

H.R. 12 which was introduced by Mr. Rodino, S. 15 which was introduced by Sen. McClellan and has passed the Senate by a vote of 80–0 and the administrations bill H.R. 6449, all call for the survivor of a policeman to receive the sum of $50,000. However they do differ in certain ways. H.R. 12 requires the policeman to be killed in the performance of his duty. It becomes effective on the date of signing. S. 15 and H.R. 6449 both require the policeman to be killed as the result of a criminal act. Then S. 15 and H.R. 6449 differ in that S. 15 is retroactive to October 17, 1972. While H.R. 6449 is not retroactive and becomes effective on date of signing.

S. 15 while requiring a policeman to be killed as the result of a criminal act only requires a fireman to be killed in the performance of his duty. What if a policeman and a fireman both went into a burning house to rescue several people? If both lost their life under S. 15, the survivours of the fireman would be paid $50,000 and the policeman's survivour would receive nothing. This isn't fair. H.R. 6449 require both to be killed as the result of a criminal act. When a policeman or anyone else is killed there is an immediate financial shock to the survivours. S. 15 and H.R. 6449 both call for $3,000 to be given to the survivours at the time of death and the $47,000 to come later. H.R. 12 does not provide for any immediate funds.

It would be no additional cost to provide the $3,000 at time of death. Some may question giving a widow one lump sum. It would be better for the survivour to receive a lump sum. This amount of money properly invested in U.S. Treasury Notes or Bonds would give a yield of $4,000 per year at an 8% rate. If paid at the rate of $1,000 per month this kind of investment could not take place.

I believe the survivors should receive this payment no matter if the man is killed as a result of a criminal act or just in the performance of his duty.

Take the train load of U.S. Government bombs that blew up in that small western town just a short time ago. This was no criminal act, yet policemen and firemen both had to perform their duty. Under S. 15 only the fireman would have been paid. Under H.R. 6449 neither would have been paid and under H.R. 12 both would have been paid.

During the flood that hit the eight eastern states just a short time ago. A Philadelphia policeman started out in a small boat to rescue four women stranded on a levee in the Schuykill River. He was drowned. If this was a fireman he would have been paid survivourship. The policeman would not be.

There may be that type of person who says why pay policeman and fireman survivourship benefits if they are killed doing their duty. What do we pay a man in the service if he is killed doing his duty? What do we pay an F.B.I. agent?

The serviceman as pointed out by Mr. McKevitt of the Justice Department stated the service man would receive burial fees between certain amounts due to the rank held. He has Government insurance which he pays a special low price for. $5,000 to $15,000. Then there is a pension between $184 and $469 per month, plus canteen privileges and medical care.

The F.B.I. agent gets Government insurance at a very low rate which pays $20,000. Then there is a widows pension which pays $85.00 per month per child, while the widow gets 40% to 45% of the agents pay for a pension. In addition to this there is also another $1,500 from a private fund, set up by a kidnap victim of the 1930's.

Let's look at the policeman. The legislative branch of the Federal Government passes laws which the policeman must enforce. Sometimes in so doing he is killed. The judicial branch of the Federal Government hands down policy which guides police power and actions. Sometimes in following these policies the policeman is killed. It is the policies and regulations set down by the Federal judicial branch that has caused the permissiveness in this country. This has done more to increase the crime rate than anything else I know of. With all the laws, rules, regulations and policies handed to a policeman by the Federal Government. They pay him nothing for carrying them out.

More than 18 States have no death benefits for a policeman killed in the line of duty. A great many States have a very spotty Workman's Compensation Plan. In a great many States policemen cannot join Social Security, because the Federal legislative branch passed an exlusion to this effect.

Every other working person enjoys social security and if they are killed in the performance of their work duty, no matter what their occupation may be.

Their survivors are paid social security benefits for the wife and children. In a very short time this benefit paid will amount to $50,000. Paid by the Federal Government. They also would receive a pension from the company and insurance payments.

Police pays are about the poorest in the country. That is why so many policemen have to moon-light at some other job to make ends meet. They have to work two jobs to make one livelihood. If a policeman applies to an insurance company for accidental coverage, the cost is two times the normal. If he waives the accidental part it is one times the normal, just because he is a policeman and has the job danger. On a policeman's salary most cannot carry insurance. That is why in almost every case where a policeman is killed you will find, his family heavy in debt.

Law enforcement officers dedicated to their law enforcement careers even though they are concerned with their low salaries. They are more concerned about maintaining and preserving the security of their families. This guaranteed benefit, in turn would improve the quality of law enforcement by lifting the morale of those who enforce rules, regulations, policies and the law. Crime knows no jurisdictional boundaries nor does it respect the color of a law enforcement officer's uniform. Each law enforcement officer, no matter what branch of law enforcement he works for, is fully cognizant that death may come to him in the performance of his sworn duty.

We policemen, would like to see from the three bills before this committee. Come a piece of legislation, that would grant the survivours of a policeman killed in the line of duty, the sum of $50,000. With $3,000 paid immediately and the balance paid in one lump sum. The bill should also be retroactive to October 16, 1972 instead of October 17, 1972. Because it was 1970 when the President of the United States promised this legislation. S. 2087 was passed in the Senate in September 1972 and should have been enacted into law by October 16, 1972. Further, the meaning of law enforcement officer, should be any professional law enforcement officer employed and trained to enforce the laws of the land. I don't think it should include people who are not trained in the law enforcement profession and only work for kicks.

As for firemen. I do not speak for them and the wisdom of this committee I am sure will correctly include who in fire fighting should be included.

I thank the committee for permitting me to make my remarks.

STATEMENT OF JOHN J. HARRINGTON, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE GRAND LODGE ON H.R. 4600 LAW ENFORCEMENT OFFICERS BILL OF RIGHTS, JULY 25, 1973

Mr. Chairman and members of the Judiciary Committee. My name is John J. Harrington. I am the national president of the Fraternal Order of Police. The Fraternal Order of Police is the oldest and largest organization of full time law enforcement officers in the country.

We were organized in 1915, and have a membership of just over 130,000 policemen from throughout the U.S.A. To join the Fraternal Order of Police as an active member you must be a full time law enforcement officer of the Federal Government, a State Government or a local municipality.

It is in their behalf that I come before you to-day to give you their views on the legislative bills pending before you today, known as the policeman's bill of rights. H.R. 4600 and H.R. 163.

One of the main things that made this country, the great country that it is, was the fact that all men were created equal, and all were guaranteed equal rights. The civil rights of every man were protected by the Government. All we ask thru this legislation is for the Government to do something to protect the rights of the policemen.

The Constitution and the Bill of Rights guarantee the people many rights. Among them are the right to peace, safety and happiness. But if there were no policemen, who are the life blood of the Constitution and the Bill of Rights. Would you enjoy the right of peace, the right of safety and the right of happiness. It is the policemen who is that thin blue line between crime and society. It is the policeman who faces those who would deprive you of your rights. The reason you can enjoy your sleep at night is because you know without thinking there are policemen working guaranteeing you your rights.

No person in this country can be forced to work for no pay, except policemen are forced to do so as punishment for violation of a parking rule of the chief. Some departments will take a man from his bed and question him for 16 or 20 hours without a lawyer. He is questioned many times by 6 or 7 interrogators. You can't do this to a hardened criminal but you can to a policeman thru what they say is department policy not a criminal proceedings.

In some departments a man's wealth is a factor in where he can work. You must make known to the police heads your worldly possessions which effect your assignments.

Some departments must pass on the girl you are permitted to marry and in some cases a policeman cannot marry until after he has served so many years on the police force and then gets permission from the head of the department.

Without warrants your car or property is subject to being searched. Any one can walk in and make any charge they want on a policeman. If this happens the policeman is suspended without pay, is not given legal counsel and after several weeks is given a trial. If found not guilty, the policeman cannot do anything but stand the loss.

I could go on for hours telling why policemen are the only second class citizens in the country. The legislation before you would only give the policeman the same rights that all other people in this country enjoy, even the criminal element. There is no cost involved in this legislation. All a policeman will get from this legislation, he will be given the same rights everyone else enjoys. Civil rights and equal rights.

Congressman Biaggi, a good policeman and a real hero for a long amount of years, in the largest police department in the country has in his long testimony explained better than I can why this legislation is needed. He was there.

Isn't it the Federal Government who protects the rights of all other employees. Wasn't it the Federal Government who said to the cities if you want the L.E.A.A. monies you have to do away with your height and weight standards and lower your intelligence requirements.

The fact that this bill would cost no money, it would help crime prevention because it would raise the morale of the policemen. This brings about better law enforcement.

Because there have been more than 130 sponsors for this legislation. This in itself is a fact that it is a national problem and that you Members of the 93rd. Congress are aware of it.

I want to thank you for giving me the opportunity to place before you the policeman's feelings on this piece of legislation.

STATEMENT OF EDWARD J. KIERNAN, PRESIDENT, INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS, ON H.R. 4600, LAW ENFORCEMENT OFFICERS BILL OF RIGHTS, JULY 25, 1973

Mr. Chairman and members of the committee, I am Edward J. Kiernan, president of the International Conference of Police Associations representing over 150,000 policemen in the United States and Canada. We have supported Mr. Biaggi's bill since it was first introduced several years ago and we continue to support it today. At that time, we were successful in the City of New York in having a similar provision added to the rules and regulations of our department and since then, by contract agreement, we have added it into our working contract with the City of New York. Even the most liberal people in the land can find nothing wrong with this type of legislation and we experienced no opposition to it in New York City The State of Washington has enacted legislation that makes it a law and the State of Maryland passed a similar bill in both Houses last year but failed to meet the deadline for signing and it is being reconsidered this year. Many police departments throughout the country have adopted similar provisions based on this concept.

We in the International Conference feel that a Federal law such as this will bring to an end the need to do the job piecemeal, city by city and state by state. There may be some who will argue that this is basically a states rights bill and our answer to them is simply that we are talking about the civil rights of a group of people who were overlooked and neglected when our Congress embarked on its crusade to protect the civil rights of minorities and others.

We are today the minority members of our society and we feel that the passage of this bill will help to remove policemen from this position of second class citizenship. It is frustrating for a policeman to have to extend Miranda warnings to a murderer, a rapist or a thief, knowing in his own mind that he, the good guy, does not have even the same basic rights as that criminal.

We can tell you gentlemen story after story of how police officers have been taken from their homes, held incommunicado for hours and in some cases days, threatened with arrest and dismissal and in general, intimidated by over zealous internal affairs investigators because of some anonymous allegation of a violation of a violation of rules and regulations. We realize that the police are a semi-military organization and are subject to similar types of discipline, but we also feel that as police officers, we should be able to keep our dignity and self respect and not be subjected to such outlandish actions under the cover of discipline. We are not interested in protecting the so called "bad guy" but we do feel strongly that even he is entitled to the same rights as the criminal. The American philosophy that "you are innocent until proven guilty" has been reversed in most police departments to read "you are guilty until proven innocent."

Another aspect of this problem is the increasing number of malicious and false charges brought against policemen by radical groups as a form of harassment Forced to face these charges without the prospect of having counsel present and in many cases without even knowing who his accuser is, places the police officer in still more of a quandary and further assists these groups who are trying to disrupt the process of law and order. Faced with this type of intimidation and harassment it is small wonder that today police departments go begging for recruits and most large cities have been forced to recruit elsewhere.

Gentlemen, I think that the large number of co-sponsors of this bill is sufficient indication that it is a national problem and that you law makers are aware of it. I will not belabor the point other than to say that I would urge that this bill be reported out of committee so that police officers throughout the Country can once more do their job without having this extra burden placed on their shoulders.

Thank you.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Washington, D.C., July 24, 1973.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship, and International Law, Committee on The Judiciary, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR CHAIRMAN EILBERG: I respectfully submit the enclosed Testimony for inclusion in the Report of your Committee on legislation that will be before your Hearings on July 25, 1973.

We presented comprehensive Testimony on May 25, 1972, before your Committee, which was then chaired by Congressman Rodino, on a variety of aspects of compensation to Public Safety Officers who were killed in the performance of their duties, such as, $50,000, gratuity; federally subsidized G.I.-type insurance for public safety officers; and a bill to insure public safety officers benefits of no less than those in Title 5 of the United States Code.

It is my understanding that your Committee will have before it H.R. 12, by Congressman Rodino. Identical legislation, H.R. 3804, by Congressman Eilberg and legislation to establish a Bill of Rights for law enforcement officers.

My testimony will therefore be confined to H.R. 12 and H.R. 3804.

Sincerely yours,

JACK A. WALLER,
Legislative Representative.

Enclosure.

STATEMENT SUBMITTED BY JACK A. WALLER, LEGISLATIVE REPRESENTATIVE, INTERNATIONAL ASSOCIATION OF FIRE FIGHTER, AFL-CIO, JULY 24, 1973

The International Association of Fire Fighters represents 165,000 Fire Fighters in approximately 1,600 cities throughout the United States and Canada. We urge your support of H.R. 12. The Senate has already passed legislation that would provide a $50,000 gratuity to qualified public safety officers who have been killed in the line of duty and the direct and approximate cause of such a death was a criminal act or an apparent criminal act. The restrictive wording in the Senate version will deny the widows of many Fire Fighters the rightfully deserved financial assistance. The deaths of Fire Fighters that occur, even when the cause of the fire might well have been a criminal act, is usually only an incidental. In the case of an arson fire, for example, in most instances the motivation of the fire was not to kill the Fire Fighter. The International Association of Fire Fighters feel very strongly that the House version should be retained.

It is a sad commentary but the facts are that many of our municipalities do not adequately provide for the surviving dependents of public safety officers.

I am sure you are aware, and have received testimony to the fact, that in many of our large cities public spirited citizens unite into organizations under such headings as the "100 Club" and voluntarily contribute into a fund annually so that mortgages can be paid on the homes of dead fire and police officers and trusts are formed to insure the future education of their dependents. These almost turn into acts of charity and although are greatly appreciated certainly leave a connotation not enjoyed by the recipients. The statistics will prove that of the Fire Fighters killed the majority are young men with large family responsibilities.

It is past time that H.R. 12 be adopted into law.

The time has come also when the public safety officers of this nation are in dire need of a boost of morale and there is no better way that this could be accomplished than by having the Federal Government enact the legislation presently before your Committee.

I can assure you that it would bring back to the Fire Fighter and Police Officer the feeling of being needed and of being appreciated by those people whose lives and property they strive daily to protect. I feel positive that the benefits derived by the people of this Nation from the enactment of such legislation would far offset the cost factor involved.

On numerous occasions, the Fire Fighters are often reassured as Members of Congress have written into the Congressional Record many compliments and platitudes directed toward the public safety officers of this nation.

Mr. Chairman, and members of the Committee, today you have the opportunity to do something truly meaningful for the people engaged in public safety work and the International Association of Fire Fighters recommend to you that you favorably report legislation that would provide for the survivors of public safety officers killed in the line of duty as $50,000 survivor's benefit.

Thank you.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL–CIO,
Washington, D.C., August 3, 1973.

Hon. JOSHUA EILBERG,
Chairman, House Judiciary Subcommittee No. 1, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the American Federation of State, County, and Municipal Employees, I would like to submit to the Subcommittee a statement by Jerry Wurf, International President, concerning the Public Safety Officers' Benefits Act of 1973.

We hope that the views in Mr. Wurf's statement will be of assistance to the Subcommittee in reporting this bill favorably and as soon as possible.

Sincerely,

WILLIAM B. WELSH,
Assistant to the President for Legislation and Political Education.

Enclosure.

STATEMENT OF JERRY WURF, INTERNATIONAL PRESIDENT, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYES, AFL–CIO

Mr. Chairman, Members of the Subcommittee, on behalf of the American Federation of State, County, and Municipal Employees, a union of 620,000 public employees, I am pleased to have this opportunity to submit our views on H.R. 12, the Public Safety Officers' Benefits Act of 1973. The membership of our union includes thousands of correctional officers, policemen and other non-federal public employees engaged in public safety work who are extremely interested in this legislation.

We believe the passage of this legislation is long overdue. For the past two years, Congress has been considering legislation to provide a federal death benefit to survivors of public safety officers killed in the line of duty. We are pleased that the Subcommittee is now considering this legislation and urge the Subcommittee to act quickly.

Section 2 of the bill amends the Omnibus Crime Control and Safe Streets Act of 1968 to include Part J, Public Safety Officers' Death Benefits. Section 701(c) (1) defines "public safety officer" as a "law enforcement officer" engaged in certain duties. The definition of law enforcement officers seems unnecessarily vague. We urge the Subcommittee to clarify this definition so as to specifically include correctional personnel who are continually subject to dangerous conditions. Two correctional officers were killed by an inmate and three others were taken hostage in a maximum security prison in Ohio. The families of the men who belong to our union will receive some compensation; however, we believe that all public safety officers should be included in this program. Other reports this week from state prisons indicate the serious hazards to all who work in these outdated and overcrowded institutions.

If the Subcommittee needs additional data, or background on the number and duties of correctional personnel who might be covered by this Act, please let us know.

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